(21,108.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 344.

THE UNITY BANKING AND SAVING COMPANY, APPELLANT,

vs.

GILBERT BETTMAN, TRUSTEE OF HOLZMAN & CO., BANKRUPTS, AND RICHARD FRITZ.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

INDEX.

No. 1750.

United States Circuit Court of Appeals, Sixth Circuit.

THE UNITY BANKING AND SAVING COMPANY,

Appellant,

vs.

HENRY P. BOYDEN, Trustee of HOLZMAN & CO. Bankrupts and RICHARD FRITZ,

Appellees.

Appeal the District Court of the United States for the Southern District of Ohio.

RECORD.

ORIGINAL TRANSCRIPT FILED SEPT. 27, 1907.

TRANSCRIPT OF RECORD.

The United States of America,
Southern District of Ohio, Western Division, ss:

At a stated Term of the District Court of the United States within and for the Sixth Judicial Circuit and Western Division of the Southern District of Ohio, begun and held at the Court Rooms in the City of Cincinnati, Ohio, on the first Tuesday of April being the Second day of that month in the year of our Lord One Thousand Nine Hundred and Seven, and in the One Hundred and Thirty-first year of the Independence of the United States of America.

Present, the Honorable Albert C. Thompson, Judge.

Among the proceedings had were the following, to-wit:

In the Matter of
Holzman & Company,
Bankrupts.

Be it remembered that heretofore, to-wit: on the 25th day of May in the year of our Lord One Thousand Nine Hundred and Five, came the Petitioners by their attorney and filed in the Clerk's Office of the Court aforesaid, his certain Petition in Bankruptcy in this cause which said Petition is clothed in the words and figures following, to-wit:

Creditors' Petition.

In the District Court of the United States, for the Southern District of Ohio, In Bankruptcy. No. ——

To the Honorable A. C. Thompson, Judge of the District Court of the United States for the Southern District of Ohio.

The Petition of William Stichtenoth, of Cincinnati, Ohio, and G. Ray King, of Indianapolis, Indiana, and Charles G. Merrell, of Cincinnati, Ohio, respectfully shows:

That Alfred Holzman, Charles Henrotin and Ross Holzman doing business as Holzman & Company, of Cincinnati, has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business, and resided, and had his domicile at Cincinnati, in the County of Hamilton, and State and district aforesaid, and owes debts to the amount of $1,000.

That your petitioners are creditors of said Holzman & Company, having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of $500. That the nature and amount of your petitioners' claims are as follows:

William Stichtenoth $250.00 which amount is in the aggregate in excess of the value of any securities that may be held by this plaintiff.

Charles G. Merrell $7500.00 which is in the aggregate in excess of the value of any securities that may be held by this plaintiff.

G. Ray King, $2,000.00 which amount is in the aggregate in excess of the value of any securities that may be held by this plaintiff.

And your petitioners further represent that said Holzman & Company is insolvent, and that within four months next preceding the date of this petition the said Holzman & Company committed an act of bankruptcy, in that he did heretofore, to-wit: on the 25th day of May, 1905, file their certain deed of assignment to Lipman Levy as assignee in the Hamilton County Court of Insolvency.

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon Holzman & Company, as provided in the acts of Congress relating to bankruptcy, and that he may be adjudged by the Court to be a bankrupt within the purview of said acts.

William Stitchtenoth,
Charles G. Merrill,
G. Ray King,
Petitioners.
By Daniel Wilson,
His Attorney.

Wilson & DeWit,
Attorneys.

United States of America,
Southern District of Ohio, ss:

William Stichtenoth, Charles G. Merrill and Daniel Wilson being three of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

Before me, Notary Public, this 25th day of May, A. D. 1905.

Ralph O. Newcomb,
Notary Public, in Office,
(Seal.) Hamilton County, Ohio.

United States of America, Southern District of Ohio, ss:

Daniel Wilson being first duly sworn says that he

is attorney for G. Ray King, duly authorized in the premises; that the said G. Ray King, is a non resident of the State of Ohio, and County of Hamilton and is not now present in said State and County. That the facts stated and the allegations of the foregoing petition are within his personal knowledge and are true as he verily believes.

Ralph O. Newcomb,

(Seal) Notary Public for Hamilton County, Ohio.

$1.20 due Notary.

And afterwards, to-wit: on the 1st day of July, A. D. 1905, at 10:20 o'clock A. M. an Adjudication of Bankruptcy was filed in the Clerk's Office of said Court in this cause which said adjudication is clothed in the words and figures following, to-wit:

Adjudication of Bankruptcy.

United States of America,
Southern District of Ohio, ss:
In the United States District Court in and for said District, Western Division.

In the Matter of Wm. Stichtenoth, et al., vs. Holzman & Company, Bankrupts.	In Bankruptcy. No. 3684.

At Cincinnati, in said district, on the first day of July, A. D. 1905, before the Honorable A. C. Thompson, Judge in said Court in Bankruptcy, the petitions of Wm. Stichtenoth and others, that Alfred Holzman, Ross Holzman and Charles Henrotin, partners as Holzman & Company, as individuals and as a partnership, be adjudged bankrupts, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said Alfred Holzman, Ross Holzman and Charles Henrotin as individuals, they therewith consenting and said Holzman & Company are hereby declared and adjudged bankrupt accordingly.

Witness the Honorable A. C. Thompson, Judge of said Court, and the seal thereof, at Cincinnati, in said District, on the first day of July A. D. 1905.

Attest: B. R. Cowen, Clerk.

(Seal.) By Robert C. Georgi, Deputy Clerk.

And afterwards, to-wit: on the 1st day of July, A. D. 1905, an Entry was made upon the Journal of said Court in this cause which said entry is clothed in the words and figures following, to-wit:

Entry Journal H. Page 380.

Order Referring Above Entitled Case to Referee Greve.

Whereas Alfred Holzman, Ross Holzman and Charles Henrotin, as individuals and as partners as Holzman & Company of Cincinnati, in the County of Hamilton and district aforesaid, on the 1st day of July, A. D. 1905, were duly adjudged bankrupts upon a petition filed in this Court against them on the 25th day of May, A. D. 1905, according to the provisions of the Acts of Congress relating to Bankruptcy.

It is thereupon ordered that said matter be referred to Charles T. Greve, of the County of Hamilton and State of Ohio, one of the Referees in Bankruptcy of this Court to take such further proceedings therein as are required by said acts and that the said Alfred Holzman, Ross Holzman, Charles Henrotin and Holzman & Company shall attend before said Referee forthwith at Cincinnati and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said Bankruptcy.

And afterwards, to-wit: on the 28th day of July, A. D. 1905, at 9 o'clock A. M. an Order made by the Referee was filed in the Clerk's Office of said Court in this cause which said Order is clothed in the words and figures following, to-wit:

Order Appointing Henry P. Boyden Trustee.

United States District Court,
Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,
Bankrupts.
} In Bankruptcy.
No. 3684.

At Cincinnati in said district on the 27th day of July, A. D. 1905, before Charles T. Greve, Referee in Bankruptcy.

This being the day appointed by the Court for the first meeting of creditors under the said bankruptcy, and of which due notice has been given in the Court Index and by mail to all creditors named in the partnership schedules and in the individual schedules heretofore filed herein, I, the undersigned referee of the said court in bankruptcy, sat at the time and place above mentioned pursuant to such notice to take the proof of debts and for the choice of trustee under the said bankruptcy, and I do hereby certify that the creditors whose claims had been allowed and were present or duly represented by unanimous vote, resolved that the creditors did not desire themselves to make a choice of a trustee of said bankrupt estate, but desired that the trustee should be appointed by the referee and by unanimous resolution

suggested as a proper person for the appointment of trustee by referee the name of Henry P. Boyden and that his bond should be fixed at the sum of $100,000.00 and thereupon, I deeming said suggestion as to the trustee and bond, a proper one did and do appoint as trustee herein, Henry P. Boyden of Cincinnati, Ohio, as trustee of said estate and do fix his bond at the sum of $100,000.00, and the trustee having forthwith tendered his bond with the National Surety Company of New York as surety thereon, I do hereby approve said bond and order the same filed with the clerk of the court herein.

Charles T. Greve,
Referee in Bankruptcy.

Filed Aug. 4, 1905. Charles T. Greve, Referee in Bankruptcy.

And afterwards, to-wit: on the 4th day of August, A. D. 1905, a Proof of Claim and Supplement affidavit of Richard Fritz was filed in the Clerk's Office of said Court in this cause which said Proof of claim and affidavit is clothed in the words and figures following, to-wit:

Proof of Claim and Supplement Affidavit.

United States of America,
Southern District of Ohio, ss:
The United States District Court in and for the said District, Western Division.

In the Matter of
Holzman & Company,
Bankrupt.
} In Bankruptcy.
No. 3684.

Proof of Claim.

United States of America, Southern District of Ohio, County of Hamilton, ss:

At Cincinnati, in said Southern District of Ohio, on the 2nd day of August, A. D., 1905, came Theodore Horstman, of Cincinnati, in the county of Hamilton, and state of Ohio, and made oath and says.

That he is the attorney of Richard Fritz in the county of Hamilton and state of Ohio.

That Holzman & Company, the persons against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is justly and truly indebted to Richard Fritz in the sum of five thousand and six hundred ($5,600.00) dollars, with interest from May 25th, 1905, at six per cent per annum; that the consideration of said debt is as stated in the supplemental statement affiadvit and claim hereto attached that no part of said debt has been paid that there are no

set offs or counter-claims to the same said indebtedness is however conditional upon failure of Richard Fritz to recover the shares of stock described in the annexed affidavit hereto attached.

That said claim arises as stated in said affidavit hereto attached; that no note has been received for such account, nor has any judgment been rendered thereon.

That the only securities held by Richard Fritz for said debt are the following: None.

That Richard Fritz has not, nor has any person by his order or to the knowledge or belief of said deponent, for his use had or received any manner of security for said debt whatever.

And this deponent further says, that this deposition cannot be made by the claimant in person because he is absent from the state and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

Theodore Horstman.

Subscribed and sworn to before me this fourth day of August, A. D., 1905.

Julius Walters,
Notary Public, Hamilton County, Ohio.

Seal; 40c due notary.

Claim and Supplemental Affidavit of Richard Fritz.
United States of America, Southern District of Ohio.
In the United States District Court in and for said District, Western Division.
In the Matter of Holzman & Company.
No. 3684. In Bankruptcy.

Claim and Supplemental Affidavit of Richard Fritz.

Richard Fritz, the claimant herein, says that on or about May 13th, 1905, he placed in the possession of Holzman & Company, a certificate for fifty shares of the preferred stock of the Philip Carey Manufacturing Company; that said certificate was not signed by said Richard Fritz for transfer or otherwise either in blank or otherwise, and no power of attorney to transfer or otherwise dispose of or deal with said stock was signed by said Richard Fritz, but said certificate was placed in the possession of Holzman & Co., solely for the convenience of said claimant in case he should thereafter have occasion to sell or hypothecate said shares of stock; that thereafter without the knowledge of said Richard Fritz, said Holzman & Co., under a pretended power of attorney from Richard Fritz, to which pretended power of attorney the signature of

Richard Fritz was forged by some party to him unknown, the said certificate for fifty shares of preferred stock of the Philip Carey Manufacturing Company was delivered by Holzman & Co. to the Unity Banking & Saving Company as collateral, together with other collateral to secure the payment of a note; that the value of said shares of stock is fifty-six hundred ($5,600.00) dollars Claimant Richard Fritz says that said Unity Banking & Saving Company claims to hold said certificate of stock as collateral to secure a note dated March 25th, 1905, for ten thousand ($10,000.00) dollars. Said Richard Fritz further says that he had no knowledge that said certificate of stock was hypothecated by said Holzman & Co., until after these proceedings in bankruptcy were commenced and that he forthwith made demand for the delivery of the same to him, which was refused.

Wherefore, Richard Fritz prays the court that the Unity Banking and Saving Company may be ordered to deliver said certificate for said shares of stock to him free of any claim thereon by the Unity Banking & Saving Company and the creditors of Holzman & Co., and for such other relief as he may be entitled to.

Horstman & Horstman,
Attorneys for Richard Fritz.

State of Ohio, Hamilton County, ss:

Theodore Horstman, being duly sworn, says that this affidavit cannot be made by the claimant in person because he is absent from the state, and that he is duly authorized by his principal whose attorney he is, to make this affidavit, and that the foregoing facts are within his knowledge and that to the best of his knowledge and belief such claim remains unsatisfied.

(Seal.) Theodore Horstman.

Sworn to before me and subscribed in my presence this fourth day of August, 1905.

Julius Walters,
Notary Public, Hamilton County, O.

40c due Notary.

And afterwards, to-wit: On the 4th day of August, A. D., 1905, a proof of claim and supplement affidavit of Richard Fritz was filed in the clerk's office of said court in this cause which said proof of claim and affidavit is clothed in the words and figures following, to-wit:

Proof of Claim and Supplement Affidavit.

Filed August 4, 1905. Charles T. Greve, Referee in Bankruptcy.

United States of America, Southern District of Ohio, ss:
In the United States District Court in and for Said District, Western Division.

In the Matter of Holzman & Co., Bankrupt. } In Bankruptcy. No. 3684.

Proof of Claim.

United States of America, Southern District of Ohio, State of Ohio, County of Hamilton, ss:

At Cincinnati, in said Southern District of Ohio, on the 2nd day of August, A. D., 1905, came Theodore Horstman, of Cincinnati, in the county of Hamilton, and state of Ohio, and made oath and says:

That he is the attorney of Richard Fritz in the county of Hamilton and state of Ohio.

That Holzman & Company, the persons against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is justly and truly indebted to Richard Fritz in the sum of three thousand six hundred and sixty-seven 50-100 dollars with interest from May 25th, 1905, at six per cent per annum; that the consideration of said debt is as stated in the supplemental statement affidavit and claim hereto attached that no part of said debt has been paid, that there are no set offs or counter-claims to the same; said indebtedness is, however, conditional upon failure of Richard Fritz to recover the shares of stock described in the annexed affidavit.

That said claim arises as stated in affidavit hereto attached, that no note had been received for such account, nor has any judgment been rendered thereon.

That the only securities held by Richard Fritz for said debt are the following: None.

That Richard Fritz has not, nor has any person by his order or to the knowledge or belief of said deponent for his use had or received any manner of security for said debt whatever.

And this deponent further says that this deposition cannot be made by the claimant in person because he is absent from the state and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

Theodore Horstman.

Subscribed and sworn to before me this 4th day of August, A. D., 1905.

Julius Walters,
Notary Public, Hamilton County, Ohio.

(Seal.) 40c due Notary.

United States of America, Southern District of Ohio, in

the United States District Court in and for the Said District, Western Division.

In the Matter of Holzman & Co., Bankrupt. } In Bankruptcy. No. 3684.

Claim and Supplemental Affidavit of Richard Fritz.

Richard Fritz, the claimant herein, says that on or about March 20th, 1905, he delivered to Holzman & Co., Certificate B 1784 for fifty shares of stock of the C. N. & C. Company preferred, with the agreement that the same should be re-delivered to him upon the payment of the amount loaned by him at that time, together with interest thereon and that at that time the said Richard Fritz loaned from said Holzman & Co. two thousand ($2,000.00) dollars, said certificate being pledged as collateral to secure said loan; that at the time said certificate was so given to said Holzman & Co., the claimant duly signed in blank a transfer on the back of said certificate; that said loan of two thousand dollars was payable on demand, but that said Holzman & Co., at no time demanded payment of said loan from this claimant, Richard Fritz; that at the time of the assignment of Holzman & Co., and also at the time of the commencement of these proceedings in bankruptcy, this claimant, Richard Fritz, was indebted to Holzman & Co., on said loan for a balance of only nine hundred and thirty-two and 50-100 ($932.50) dollars, but that no demand for such payment had at any time been made of this claimant; that at all times he was prepared and willing to pay his indebtedness under said loan on demand of said Holzman & Co., that without the knowledge or consent of said Richard Fritz the said Holzman & Co., hypothecated said certificate for fifty shares preferred C. N. & C. stock with one C. I. Dreifus, of Cincinnati, Ohio, to secure a note payable by Holzman & Co., to said C. I. Dreifus; that said Holzman & Co., also gave to said C. I. Dreifus other collateral to secure said note and that said Richard Fritz had no knowledge of said hypothecation of the certificate with said C. I. Dreifus until after the assignment of Holzman & Co., and that he had given no power or authority to Holzman & Co. to hypothecate, transfer or otherwise deal with said stock until after non-payment of his loan on demand, which demand was never made.

Wherefore said Richard Fritz prays the court to order said certificate to be delivered to him by said C. I. Dreifus, free of all claim of said C. I. Dreifus and the creditors of Holzman & Co., or if such order be not made, that the other collateral held by said C. I. Dreifus to secure his claim may be ordered first sold and the proceeds be applied to the payment of his claim and that thereupon after his claim is satisfied, said certificate may be ordered to

be delivered to said Richard Fritz and for such other and further relief as this claimant may be entitled to.

Horstman & Horstman,
Attorneys for Richard Fritz.

State of Ohio, Hamilton County, ss:

Theodore Horstman, being duly sworn, says that this affidavit cannot be made by the claimant in person because he is absent from the state, and that he is duly authorized by his principal, whose attorney he is, to make this affidavit, and that the foregoing facts are within his knowledge and that to the best of his knowledge and belief such claim remains unsatisfied.

Theodore Horstman,

Sworn to before me and subscribed in my presence this 4th day of August, 1905.

Julius Walter.
(Seal.) Notary Public, Hamilton County, Ohio.

40 cents due Notary.

And afterwards, to-wit: on the 4th day of October, A. D. 1906, an Answer was filed in the Clerk's Office of said court in this cause which said Answer is clothed in the words and figures following, to-wit:

Answer of H. P. Boyden, trustee, to claim of Richard Fritz.

In the United States District Court, In and for the Southern District of Ohio, Western Division.

Filed Oct. 23, 1905, Charles T. Greve. Referee in Bankruptcy.

In the Matter of
Holzman & Company,
Bankrupts. } No. 3864.

And now comes Henry P. Boyden, trustee in bankruptcy of Holzman & Company, and for answer to the claim of Richard Fritz, claimant, filed herein on August 4, 1905, on information and belief, denies that no power of attorney to transfer or otherwise dispose of, or deal with the stock mentioned in said claim was signed by said Richard Fritz, and further avers on information and belief that if the court should find that said power of attorney was not signed by said Richard Fritz, yet, nevertheless said Fritz authorized said Holzman & Co., to sign his name to such power of attorney; he further denies that said stock was placed in the possession of Holzman & Co., solely for the convenience of said Richard Fritz, as in said claim alleged, but on the contrary he avers, on information and belief, that said stock was deposited and hypothecated by said Fritz with said Holzman & Co. as

security for moneys advanced, and to be advanced by Holzman & Co., to and for said Fritz, and for his use and benefit; that said Trustee on information and belief denies that the signature of said Richard Fritz was forged on said power of attorney.

Wherefore, said Henry P. Boyden, trustee prays the court to hear and determine the controversy between said Richard Fritz and said Unity Bank & Savings Company as to the ownership or title to said certificate for fifty (50) shares of Preferred Stock of the Philip Carey Manufacturing Company, and make such order in the premises as may be just and proper, and protect the interests of said trustee in the premises, and for such other relief as he may be entitled to.

Henry P. Boyden,
Trustee in Bankruptcy.
Dan Wilson, J. W. Peck, B. Heidingsfeld,
Attorneys for Henry P. Boyden, Trustee.

And afterwards, to-wit: on the 30th day of October A. D. 1905, an Answer was filed in the clerk's office of said court in this cause which said Answer is clothed in the words and figures following, to-wit:

Answer of the Unity Banking & Saving Co., to the claim of Richard Fritz, October 28, 1905.

Filed Oct. 23, 1905, Charles T. Greve. Referee in Bankruptcy.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of Holzman & Company, Bankrupts.	No. 3684. In Bankruptcy.

Answer of the Unity Banking & Saving Company.

Appearance is entered solely for the purpose of this answer. Now comes the Unity Banking and Saving Company and for answer to the claim and petition of Richard Fritz filed herein, denies each and every allegation therein contained except as hereinafter expressly admitted to be true, and says that on or about the 21st day of March, 1905, it loaned to Holzman & Company the sum of $10,000.00, and took therefor a note payable on demand. Said bank took as security therefor and for certain other indebtedness certain collateral. On the 15th day of May, 1905, by agreement with Holzman & Company as a substitute for the withdrawal of some of said collateral of the face value of $5,000.00 the Unity Banking & Saving Company took 50 shares of the Philip Carey Manufacturing Company preferred stock of the face value of $5,000.00 as collateral. These 50 shares were pledged as security for

the payment of said loan and other indebtedness of Holzman & Company to the bank.

Thereafter, on due demand being made Holzman & Company defaulted in the payment of said loan and interest and with the consent of the trustee in bankruptcy the bank sold all the other collateral mentioned in connection with said $10,000.00 demand note of March 21st. The balance still due on said note is $4,965.78 and $214.30 interest to October 25, 1905. The Unity Banking & Saving Company received said collateral as a pledge for the above mentioned demand note of $1,000.00 and other loans, and advanced money on the faith thereof and allowed a continuing credit on the faith thereof, and took the same without knowledge or notice of the claim of Richard Fritz thereto, or of any other party whatsoever, and took the same believing and relying on the representations of Holzman & Company that it has full power and right to pledge, transfer or sell the same. The said stock was taken by the Unity Banking & Saving Company in the usual course of business and for value and without notice.

The said 50 shares are evidenced by one certificate of stock, duly executed and endorsed. To said certificate is attached a power of attorney signed in blank by the indorser of said stock. Said power of attorney was delivered with said certificate of stock.

The Unity Banking & Saving Company further states that on the 28th day of July, 1905, Richard Fritz, commenced an action against it in the court of Common Pleas of Hamilton County, Ohio, being the case of Richard Fritz, plaintiff, against the Unity Banking & Saving Company, defendant, and being case known and numbered as 132,041 in said court. In said action Richard Fritz claimed that the defendant therein wrongfully detained from him a certificate for 50 shares of the stock of the Philip Carey Manufacturing Company (meaning the same certificate which he claims herein) and prayed the recovery of the same and damages in $500.00. That summons in said cause was duly served upon defendant. The bank answered in said cause, denying the allegations in the petition.

The Unity Banking & Saving Company says that it should not be required to answer two suits or proceedings for the same object, nor harassed by the same, and that Richard Fritz should be required to elect whether he will proceed before the referee herein or in the said court of Common Pleas.

Wherefore The Unity Banking & Saving Company prays that before proceeding further in this cause that Richard Fritz be required to elect in which of the above

two mentioned causes he will proceed and that the court order him to dismiss the cause in which he does not elect to proceed, and that if this cause is continued in this court that judgment may be entered for the Unity Banking & Saving Company, adjudging that it is lawfully entitled to retain said certificate of stock and to retain the proceeds of the sale of the stock represented by said certificate and to apply the same on the loans for which it was pledged as security, and for all further relief to which it may be entitled.

Louis J. Dolle,
Attorney for the Unity Banking &
Saving Company.

State of Ohio, County of Hamilton, ss:

Charles F. Goettheim, being first duly sworn, deposes and says that he is the Secretary of The Unity Banking & Saving Company and hereto duly authorized, and that the facts and allegations in the foregoing answer set out are true as he verily believes.

Charles F. Goettheim.

Sworn to before me and subscribed in my presence this 26th day of October, 1905.

H. E. Harrit,
Seal. Notary Public within and for
40c due Notary. said County and State.

And afterwards, to-wit: on the 4th day of October A. D. 1906, a Reply was filed in the Clerk's Office of said Court in this cause which said Reply is clothed in the words and figures following, to-wit :

Reply of Richard Fritz to Answer of Unity Banking and Saving Company.

Filed Oct. 31, 1905. Chas. T. Greve, Referee in Bankruptcy.

In the United States District Court, for the Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,— Bankruptcy. } No. 3684.

Richard Fritz for reply to the Answer of the Unity Banking & Saving Company denies each and every allegation therein contained except such as are admissions of the allegations of the claim heretofore filed herein, and such as are hereinafter expressly admitted to be true.

On information and belief Richard Fritz further says, that the Unity Banking & Saving Company at the time it received from Holzman & Company the Fifty (50) shares of The Philip Carey Manufacturing Company Preferred

Stock, held in addition to said shares of stock many other securities consisting of bonds, stocks and other collateral securities pledged to secure said loan of Ten Thousand Dollars ($10,000.00) and numerous other loans.

Richard Fritz further says on information and belief that said securities were and are in value largely in excess of the indebtedness of said Holzman & Company to said The Unity Banking & Saving Company, and that said The Unity Banking & Saving Company has sold all or most of said securities and has realized more than sufficient cash therefrom to pay all its claims against Holzman & Company.

On information and belief Richard Fritz further says, that the said The Unity Banking & Saving Company received said Fifty (50) shares of The Philip Carey Manufacturing Company Preferred Stock from Holzman & Company prior to May 15, 1905, and thereafter surrendered the same back to Holzman & Company, and again received the same from Holzman & Company at a subsequent date. Said Richard Fritz had no knowledge that Holzman & Company at any time held said Fifty (50) shares of stock and had no knowledge that Holzman & Company had any intent to hypothecate said shares of stock until after these Bankruptcy proceedings were commenced. Richard Fritz denies that there is any balance due to The Unity Banking & Saving Company by Holzman & Company and that it is not fully protected for all its claims against Holzman & Company either by cash realized or other securities held by it.

Richard Fritz further avers that one Charles F. Geottheim, Secretary of The Unity Banking & Saving Company was also an employee and agent of Holzman & Company, and had knowledge or should have had knowledge that said Holzman & Company had no authority to transfer or hypothecate said shares of stock.

Richard Fritz further says, that on being informed after the failure of Holzman & Company that The Unity Banking & Saving Company had possesion of said certificate of stock, he forthwith demanded the delivery of the same to him from said Unity Banking & Saving Company, which said Company refused.

Richard Fritz further says that at no time prior to the failure of Holzman & Company about May 25, 1905, was any demand made upon him by Holzman & Company to pay any indebtedness which he did not forthwith pay; that Holzman & Company had no authority to hypothecate or otherwise dispose of said Fifty (50) shares of stock. He further states on information and belief that at

the time of said failure he was not indebted to Holzman & Company in any sum, although the Trustee in Bankruptcy claims that he was at that time upon closing of his account indebted to Holzman & Company in the sum of Nine Hundred and Thirty-Two Dollars and Fifty Cents ($932.50) upon his market dealings with said firm against which, however, said Richard Fritz had at the time a valid offset in the sum of about Forty Five Hundred Dollars ($4,500.00) the value of Fifty (50) shares of Cincinnati, Newport & Covington Railway Preferred Stock, which had been hypothecated by Richard Fritz with Holzman & Company to secure the indebtedness of Richard Fritz to Holzman & Company, and which certificate had been unlawfully and fraudulently converted by Holzman & Company to their own use, so that irrespective of the Fifty (50) shares of Philip Carey Manufacturing Company Preferred Stock, said Holzman & Company were at the time of their failure indebted to Richard Fritz, even if said claim of Nine Hundred and Thirty-Two Dollars and Fifty Cents (932.50) balance is found to be valid against him, in the sum of not less than Three Thousand, Six Hundred and Sixty-Seven Dollars and Fifty Cents ($3,667.50).

Wherefore Richard Fritz prays as in his original claim that said certificate of Fifty (50) shares of the Philip Carey Manufacturing Company Preferred Stock, may be ordered delivered to him free of the claims of all parties and for his costs herein.

Horstman & Horstman,
Attorneys for Richard Fritz.

State of Ohio, Hamilton County, ss:

Richard Fritz being duly sworn says, that he believes the facts above set forth to be true.

Richard Fritz.

Sworn to before me and subscribed in my presence this 30th day of October, A. D. 1905.

Seal. Julius Walter.

40c due Notary. Notary Public, Hamilton County, O.

And afterwards, to-wit: on the 4th day of October, A. D., 1906, a motion was filed in the clerk's office of said court in this cause, which said motion is clothed in the words and figures following, towit:

Motion of the Unity Banking & Saving Co. to the Reply of Richard Fritz, October 31, 1905.

Filed October 31, 1905. Chas. T. Greve, Referee in Bankruptcy.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of Holzman & Company, Bankrupt. } In Bankruptcy. No. 3684.

Motion to Strike Out Certain Portions of the Reply of Richard Fritz to the Answer of the Unity Banking & Saving Company.

Now comes the Unity Banking & Saving Company and moves the court to strike out:

(1) All that portion of the reply of Richard Fritz to its answer herein as is contained on page 1 of the reply between the words "Richard Fritz further says" and the words "claims against Holzman & Company" for the reason that the same is a departure from the case made by the original claim and petition herein and is redundant, irrelevant and immaterial.

(2) All that portion of the reply of Richard Fritz to its answer herein as is contained on pages 1 and 2 of the reply between the words "on information and belief of Richard Fritz" and the words "at a subsequent date," for the reason that the same is a departure from the case made by the original claim and petition herein and is redundant, irrelevant and immaterial.

(3) All that portion of the reply of Richard Fritz to its answer herein as is contained on page 2 of the reply between the words "Richard Fritz further says that one" and the words "said shares of stock" for the reason that the same is a departure from the case made by the original claim and petition herein and is redundant, irrelevant and immaterial.

(4) All that portion of the reply of Richard Fritz to its answer herein as is contained on pages 2 and 3 of the reply between the words "Richard Fritz says that at no time" and the words "three thousand six hundred and sixty-seven and fifty cents" for the reason that the same is a departure from the case made by the original claim and petition herein and is redundant, irrelevant and immaterial.

Louis J. Dolle,
Attorney for The Unity Banking & Saving Company.

Memorandum. Durbin vs. Fisk, 16 O. St. 533; Benson vs. Stein, 34 O. St. 294; Newcomb vs. Webber, 1 C. S. C. R. 12-14.

And afterwards, to-wit: on the 4th day of January, A. D., 1907, an entry was made by the referee in this cause and filed in the clerk's office of this court, which said entry is clothed in the words and figures following, to-wit:

Entry overruling motion, October 31, 1905.

Filed October 29, 1906. Chas. T. Greve, Referee in Bankruptcy.

In the United States District Court, for the Southern District of Ohio, Western Division.

In the Matter of Holzman & Company, Bankrupts. } In Bankruptcy. No. 3684.

Entry.

This cause came on for hearing on motion of the Unity Banking & Savings Company to strike out certain portions of the reply of Richard Fritz to the answer of the Unity Banking & Savings Company; on consideration thereof the court overrules said motion, to which ruling the Unity Banking & Savings Company duly excepted.

And this entry is now ordered as of date of October 31, 1905.

Charles T. Greve,
Referee in Bankruptcy.

And afterwards, to-wit: on the 4th day of October, A. D., 1906, a reply was filed in the clerk's office of said court in this cause, which said reply is clothed in the words and figures following, to-wit:

Reply of Richard Fritz to Answer of H. P. Boyden, Trustee.

Filed December 7, 1905. Charles T. Greve, Referee in Bankruptcy.

In the United States District Court, for the Southern District of Ohio, Western Division.

In the Matter of Holzman & Company. } No. 3684. In Bankruptcy.

Now comes Richard Fritz and for reply to the Answer of H. P. Boyden, Trustee, denies each and every allegation therein contained, except such as are admissions of the allegations of his claim herein and such as are hereinafter expressly admitted to be true.

He denies that he ever authorized Holzman & Company to sign his name to any Power of Attorney attached to the certificate of stock for Fifty (50) shares of The Philip Carey Manufacturing Company, Preferred.

He denies that said stock was deposited by Fritz with Holzman & Company as security for moneys advanced and to be advanced by Holzman & Company to said Fritz, but avers that said certificate of stock was given to said Holzman & Company with the express understanding that he, Richard Fritz, did not wish to endorse over by transfer thereon or by Power of Attorney, said shares of stock but desired to retain ownership thereof in his own name, it being understood that Richard Fritz would, on demand, pay any indebtedness that he might at any time owe to said Holzman & Company, and only on failure to do so after demand, he would then if necessary use

said certificate of shares of stock for sale or collateral, as he might then determine. Said Richard Fritz further says on information and belief, that at the time of the failure of Holzman & Company about May 25, 1905, he was not indebted to Holzman & Company on his market dealings but that the Trustee in Bankruptcy for Holzman & Company claims that he was indebted to Holzman & Company at that time upon the closing of his accounts in the sum of $932.50, but Richard Fritz avers that as an offset against any such indebtedness if the same existed upon his market dealings, he has a valid legal claim against Holzman & Company for $4,500.00 the value of Fifty (50) shares of Cincinnati, Newport & Covington Railway Company Preferred Stock, which he hypothecated with Holzman & Company to secure any indebtedness that might exist against him on his dealings with them, and that said Holzman & Company without authority, fraudulently converted said Fifty (50) shares of Cincinnati, Newport & Covington Railway Company Preferred Stock to their own use, so that at the time of the failure of Holzman & Company on May 25, 1905, independent of any and all claims of Richard Fritz with respect to said Fifty (50) shares of Philip Carey Manufacturing Company preferred stock, said Holzman & Company were indebted to Richard Fritz in the sum of not less than $3,667.50 and probably in the sum of $4,500.00.

Wherefore said Richard Fritz prays the Court to order delivered to him the certificate for Fifty (50) shares of the Philip Carey Manufacturing Company Preferred Stock free of the claim of all parties and for his costs herein.

Horstman & Horstman,
Attorneys for Richard Fritz.

State of Ohio, Hamilton County, ss:

Richard Fritz being duly sworn says that he believes the facts above set forth to be true.

Richard Fritz.

Sworn to before me and subscribed in my presence this 30th day of October, A. D. 1905.

Julius Walter,
Notary Public, Hamilton County, O.

40c due Notary.

Seal.

And afterwards, on the 5th day of December, A. D. 1905, an entry made by Referee was filed in the Clerk's Office of said Court which said Entry is clothed in the words and figures following, to-wit:

Leave granted Richard Fritz to file amended petition December 5, 1905.

Filed Oct. 29, 1906.

Chas. T. Greve, Referee in Bankruptcy.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,
Bankrupt.
} In Bankruptcy. No. 3684.

At Cincinnati, Ohio, before Charles T. Greve, Referee in Bankruptcy, December 5, 1905.

This cause came on for hearing for the further consideration of the claim of Richard Fritz and others to a certain certificate of stock of the Philip Carey Manufacturing Company, leave is granted Richard Fritz to file an amended petition, which is now accordingly done, and it is ordered that this cause proceed for hearing upon the amended petition of said Richard Fritz, and leave is granted to the Unity Banking and Savings Company and said trustee to file amended pleadings herein to said issue.

Charles T. Greve,
Referee in Bankruptcy.

And afterwards, to-wit: on the 5th day of December, A. D. 1905, there was filed in the Office of Referee and afterwards, to-wit: on the 4th day of October, A. D. 1906, in the Office of the Clerk of said Court, an Amended Petition which said Petition is clothed in the words and figures following, to-wit:

Amended Petition of Richard Fritz, Dec. 5, 1905.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,
} In Bankruptcy. No. 3684.

Amended petition of Richard Fritz for delivery of certificate for the Philip Carey Manufacturing Company Preferred Stock, etc.

Richard Fritz the claimant says that he is the owner of Fifty (50) shares of the preferred stock of The Philip Carey Manufacturing Company a corporation, and of a certain certificate for said shares of stock; that The Unity Banking & Saving Company at the time of the commencement of the proceedings in bankruptcy herein, had possession of said certificate and claimed to have some lien or interest therein; that The Unity Banking & Saving Company had been placed in possession of said certificate by Holzman & Co., prior to the commencement of proceedings in bankruptcy against Holzman & Company, but that said The Unity Banking & Saving Company has, since the original claim herein of Richard Fritz was filed in open

court surrendered said certificate of stock to H. P. Boyden, Trustee in Bankruptcy of Holzman & Co., subject to the right of said The Unity Banking & Saving Company to set up whatever lien or interest it may have in said certificate and shares of stock, and that said certificate is now in the possession and custody of said Trustee in Bankruptcy, Henry P. Boyden.

Said Richard Fritz says that said Henry P. Boyden, Trustee in Bankruptcy of Holzman & Co., wrongfully detains from Richard Fritz the said certificate of stock.

Wherefore Richard Fritz prays the Court for an order upon Henry P. Boyden, Trustee in Bankruptcy of Holzman & Co., to deliver said certificate for Fifty (50) shares of the preferred stock of The Philip Carey Manufacturing Company to said Richard Fritz free of all liens and interests therein of The Unity Banking & Saving Company and for such other relief as he may be entitled to.

Horstman & Horstman,
Attorneys for Richard Fritz.

State of Ohio, Hamilton County, ss.

Richard Fritz being duly sworn says that he believes that the facts above set forth to be true.

Richard Fritz.

Sworn to before me and subscribed in my presence this 5th day of December, A. D. 1905.

Theo. Horstman,
(Seal.) Notary Public, Hamilton County, O.

And afterwards, to-wit: on the 5th day of October, A. D. 1906, a demurrer was filed in the clerk's office of said Court which said demurrer is clothed in the words and figures following, to-wit:

Demurrer of the Unity Banking & Saving Co. to the Amended Petition of Richard Fritz, Dec. 5, 1905.

United States District Court,
Southern District of Ohio, Western Division.

Filed Dec. 5, 1905. Chas. T. Greve, Referee in Bankruptcy.

In the Matter of
Holzman & Company, Bankrupt. } In Bankruptcy. No. 3684.

The Demurrer of The Unity Banking & Saving Company to the Amended Petition of Richard Fritz.

This defendant, by protestation not confessing nor acknowledging all or any of the matters and things in the said plaintiff's amended petition to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer showeth that the said plaintiff has not in and by said

petition made or stated such a cause as doth or ought to enitle him to any such discovery or relief as is thereby sought and prayed for, fro or against this defendant; and for the further reason that said petition does not state facts sufficient to entitle Richard Fritz to intervene in said cause and is insufficient in law; wherefore this defendant demands judgment of this Honorable Court whether he shall be compelled to make any other or further answer to this said petition or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

Louis J. Dolle,
Constant Southworth,
Solicitor for The Unity Banking and Saving Company.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Louis J. Dolle,
Constant Southworth,
Solicitor for The Unity Banking and Saving Company.

State of Ohio, County of Hamilton, ss:

Charles F. Goettheim, makes solemn oath and says that he is the secretary of The Unity Banking & Saving Company and hereto duly authorized and that the foregoing demurrer is not interposed for delay.

Charles F. Gottheim.

Sworn to before me and subscribed in my presence this 5th day of December, A. D. 1905.

Constant Southworth,
Notary Public within and for said County and State.
(Seal)

40c due notary.

And afterwards, to-wit: on the 5th day of December, A. D. 1905, an entry was made by the Referee in this cause and Filed in the Clerk's Office of said Court on the 4th day of January, A. D. 1907, which said entry is clothed in the words and figures following, to-wit:

Entry Overruling Demurrer, Dec. 5, 1905.

Filed Oct. 29, '06. Chas. T. Greve, Referee in Bankruptcy.

In the United States District Court for the Southern District of Ohio, Western Division.

In the Matter of Holzman and Company, Bankrupt.	In Bankruptcy. No. 3684.

Entry.

This cause came on for hearing on the demurrer of

The Unity Banking & Savings Company to the amended petition of Richard Fritz; on consideration whereof the court overruled said demurrer, to which ruling The Unity Banking & Savings Company duly excepted at the time.

And this entry is now ordered to be made as of date December 5, 1905.

Charles T. Greve,
Referee in Bankruptcy.

And afterwards, to-wit: on the 4th day of October, A. D. 1906, an Answer was filed in the Clerk's Office of said Court in this cause which said Answer is clothed in the words and figures following, to-wit:

Answer of The Unity Banking & Saving Co., to The Amended Answer of Richard Fritz. Dec. 7, 1905.

Filed Dec. 7, '05. Chas. T. Greve, Referee in Bankruptcy.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,
Bankrupt.
} In Bankruptcy. No. 3684.

Answer of The Unity Banking & Saving Company to the Amended Petition of Richard Fritz.

Appearance is hereby entered solely for the purpose of this answer. Now comes The Unity Banking & Saving Company and for answer to the amended petition of Richard Fritz filed herein December 5th, 1905, denies each and every allegation therein contained except those hereinafter expressly admitted to be true. The Unity Banking & Saving Company for answer says that on or about the 21st day of March, 1905, it loaned to Holzman & Company the sum of $10,000.00, and took therefor a note payable on demand. Said bank took as security therefor and for certain other indebtedness certain collateral. On the 15th day of May, 1905, by agreement with Holzman & Company as a substitute for some of said collateral of the face value of $5,000.00 on said date withdrawn The Unity Banking & Saving Company took 50 shares of The Philip Carey Manufacturing Company preferred stock of the face value of $5,000.00 as collateral in the place of said collateral withdrawn, and on the same conditions of pledge as the said collateral withdrawn. These 50 shares were pledged as security for the payment of said loan and other indebtedness of Holzman & Company to the Bank.

Thereafter, on due demand being made, Holzman &

Company defaulted in the payment of said loan and interest, and with the consent of the Trustee in bankruptcy of Holzman & Company, said bank sold all the other collateral mentioned in connection with said $10,000.00 demand note of March 21st. The balance still due on said note is $4,965.78 and $214.30 interest to October 25th, 1905. The Unity Banking and Saving Company received said collateral as a pledge for the above mentioned demand note of $10000.00 and other loans, and advanced money on the faith thereof and allowed a continuing credit on the faith thereof, and took the same without knowledge or notice of the claim of Richard Fritz thereto, or of any other party whatsoever, and took the same believing and relying on the representations of Holzman & Company that it had full power and right to pledge, transfer or sell the same. The said stock was taken by the Unity Banking & Saving Company in the usual course of business and for value and without notice.

The said 50 shares of The Philip Carey Mfg. Company preferred stock are evidenced by one certificate of stock, duly executed and endorsed. To said certificate is attached a power of attorney signed in blank by the indorsee of said stock, Richard Fritz or with his name by his consent and authority. Said power of attorney was delivered with said certificate of stock and was and is attached to the same.

The Unity Banking & Saving Company says that it is informed and believes and therefore avers that Richard Fritz deposited and left with Holzman & Company or their predecessors the said 50 shares of Philip Carey Manufacturing Company preferred stock and that he executed a blank power of attorney for the sale and transfer thereof, the purpose and object being to secure an advancement made by said Holzman & Company or its predecessors to said Richard Fritz and for the purpose of investing said Holzman & Company, or its predecessors with the apparent and full title to said 50 shares of stock so that the same could be readily transferred by them. That Richard Fritz himself executed the said blank power of attorney or authorized the said Holzman & Company or their predecessors, their agents or employees, to execute it for him in his name. That Richard Fritz never tendered The Unity Banking & Savings Company the amount of his pledge of said Carey Stock to the Bankrupts prior to the commencement of this proceeding.

Wherefore the Unity Banking & Saving Company says that Richard Fritz is estopped to make any claim to said 50 shares of Prilip Carey Manufacturing Company preferred stock as against The Unity Banking & Saving Company and until all the indebtedness of said Unity Banking & Saving Company from Holzman & Company to it is paid in full with interest.

Wherefore, The Unity Banking & Saving Company prays that judgment may be entered for The Unity Banking & Saving Company, adjudging that it is lawfully entitled to retain said certificate of stock and to retain the proceeds of the sale of the stock represented by said certificate and to apply the same on the loans for which it was pledged as security, and for all further relief to which it may be entitled.

Louis J. Dolle,
Attorney for the Unity Banking & Saving Company.

State of Ohio, County of Hamilton, ss:

Charles F. Goettheim, being first duly sworn, deposes and says that he is Secretary of The Unity Banking & Saving Company and hereto duly authorized, and that the facts and allegations in the foregoing amended answer contained are true as he verily believes.

And further deponent saith not.

Chas. F. Goettheim.

Sworn to before me and subscribed in my presence this 6th day of December, A. D. 1905.

Constant Southworth.
Notary Public in and for Hamilton County, Ohio.
(Seal) 40c due Notary.

And afterwards, to-wit: on the 4th day of October, A. D. 1906, a Reply was filed in the Clerk's Office of said court in this cause which said Reply is clothed in the words and figures following, to-wit:

Reply of Trustee to said Answer Dec. 7, 1905.

Filed Dec. 7, 1905. (Chas. T. Greve, Trustee in Bankruptcy).

United States District Court. Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,
Bankrupts. } In Bankruptcy. No. 3684.

Reply of Henry P. Boyden, trustee, to the answer of the Unity Banking and Savings Co.

And now comes Henry P. Boyden, trustee, and for reply to the answer of the Unity Banking & Savings Co., filed herein on December 1905, admits, that said bank took as security for said $10,000 notes, in said answer men-

tioned, certain collateral, which was expressly hypothecated for that particular note and none other, and he therefore denies that said collateral was taken as security for any indebtedness other than said $10,000 note in said answer mentioned;

And said trustee further denies that said bank took said fifty shares of the Carey Mfg. Co., stock as collateral for any loans other than said note of $10,000 in said answer mentioned.

This defendant further denies that said fifty shares were pledged as security for said $10,000 note, and other indebtedness of Holzman & Co., to said bank, but on the contrary avers that said fifty shares were pledged solely as security for said $10,000 note and none other.

This defendant denies that said bank received said collateral as a pledge for said note of $10,000 and other loans, but admits that it received said collateral as a pledge for said $10,000 loan, and no other.

The defendant further denies that said bank advanced any other money, or allowed a continuing credit on the faith of said collateral.

This defendant further alleges that said fifty shares of stock were pledged by Holzman & Co., with said bank for the sole and special purpose of securing the payment of said $10,000.00 note, mentioned in the answer of said bank, and for that particular loan, and for no other purpose whatever.

Wherefore, said Henry P. Boyden prays the court to hear and determine the controversy between Richard Fritz and said bank as to the ownership or title to said certificate for fifty shares of said Carey stock; that before any order is made upon said trustee in respect to the delivery of said stock, that the said bank be first required to surrender and deliver the physical possession thereof to him, and thereupon to make such order in the premises as may be just and proper, and protect the interests of said trustee in the premises; and for such other relief as he may be entitled to.

Louis Kramer,
Of Counsel for Henry P. Boyden,
Trustee.

State of Ohio, Hamilton County, ss:

Henry P. Boyden, being first duly sworn, says that the facts above set forth are true as he verily believes.

Henry P. Boyden.

Sworn to before me and subscribed in my presence this 7th day of December, 1905.

Otis B. Fisk,

Notary Public in and for Hamilton County, Ohio.

And afterwards, to-wit: on the 4th day of October A. D. 1906, a reply was filed in the clerk's office of said court in this cause which said reply is clothed in the words and figures following, to-wit:

Reply of Richard Fritz to said answer, December 7, 1905.

Filed Dec. 7, 1905. Chas T. Greve, Referee in Bankruptcy.

In the United States District Court, for the Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,
Bankrupts.
} In Bankruptcy. No. 3684.

Reply of Richard Fritz.

Richard Fritz for reply to the answers of the Unity Banking and Savings Company and to the answer of H. P. Boyden, trustee, says he denies each and every allegation contained in said answers except such as are admissions of the allegations of the amended petition, and also excepting such as are hereinafter expressly admitted to be true. He says that he has no knowledge as to circumstances under which the Unity Banking & Saving Company came into possession of the certificate of stock described in the amended petition, and therefore, denies the allegations of the answers and demands proof thereof. He admits that said fifty (50) shares of the Philip Carey Manufacturing Company preferred stock are evidenced by one certificate of stock duly executed and assigned by endorsement to Richard Fritz. He denies that to said certificate is attached a power of attorney signed in blank or otherwise by himself Richard Fritz, and he denies that his name was, with his consent or with his authority at any time signed in blank or otherwise to any power of attorney with respect to said certificate of stock, and he denies that at any time he gave Holzman & Company any power or authority either orally or in writing to sell, hypothecate or otherwise dispose of said certificate of stock, but he avers that said certificate of stock was placed in possession of Holzman & Company by, himself, Richard Fritz, solely for the custody of the same until occasion might arise to sell or hypothecate or reclaim the said certificate.

Said Richard Fritz further says, that he had no knowledge that Holzman & Company had any intent to sell, transfer or hypothecate said certificate for said shares of stock, or that they had transferred and hypothecated the

same until after these proceedings in bankruptcy were commenced, and that thereupon he forthwith made demand for delivery of the same to him, which was refused.

He further avers on information and belief, that one, Charles F. Goettheim, secretary of the Unity Banking & Saving Company was also an employee and agent of Holzman & Company, and that the Unity Banking & Saving Company had knowledge that Holzman & Company has no authority to transfer or re-hypothecate said certificate of stock, and that said the Unity Banking & Saving Company should have known that Holzman & Company had no authority to hypothecate with said the Unity Banking & Saving Company said certificate of stock, and that by reason thereof, said Company is estopped from setting up any lien or claim against said certificate and shares of stock.

Richard Fritz further says, than at no time prior to the assignment of Holzman & Company or the commencement of these proceedings in bankruptcy against them, was any demand made upon him by Holzman & Company to pay any indebtedness which he did not forthwith pay, and that Holzman & Company had no authority to hypothecate or otherwise dispose of said fifty (50) shares of stock. He further states on information and belief, that at the time of said failure and commencement of these proceedings in bankruptcy, he was not indebted to Holzman & Company in any sum, although the trustee in bankruptcy claims, that he was at that time upon the closing of his account, indebted to Holzman & Company in the sum of nine hundred and thirty-two dollars and fifty cents ($932.50) upon his dealings with said firm, against which however, said Richard Fritz had at that time a valid offset in the sum of about forty-five hundred dollars ($4,-500.00), the value of fifty (50) shares of Cincinnati, Newport & Covington Railway Company Preferred Stock, which had been hypothecated by Richard Fritz with Holzman & Company to secure any indebtedness of Richard Fritz to Holzman & Company, and which certificate had been unlawfully and fraudulently converted by Holzman & Company to their own use, so that irrespective of the fifty (50) shares of the Philip Carey Manufacturing Company Preferred Stock, said Holzman & Company were at the time of their failure indebted to Richard Fritz, even if said claim of nine hundred and thirty-two dollars and fifty cents ($932.50) balance is found to be valid against him, in the sum of not less than three thousand six hundred and sixty-seven dollars and fifty cents ($3,667.50).

Richard Fritz further says, that the Unity Banking

& Saving Company at the time it received from Holzman & Company the fifty (50) shares of the Philip Carey Manufacturing Company Preferred Stock, held in addition to said shares of stock, many other securities consisting of bonds, stock and other collateral securities pledged to secure said loan of ten thousand dollars ($10,000) and numerous other loans, and that said Holzman & Company authorized said pledgee, the Unity Banking & Saving Company, to hold each and every security pledged with it for the satisfaction of each and all of the debts of said Holzman & Company owing to said the Unity Banking & Saving Company, that might then exist or that might thereafter be contracted, and that said securities exclusive of said fifty (50) shares of the Philip Carey Manufacturing Company Preferred Stock were, and are in value largely in excess of the indebtedness of said Holzman & Company to said the Unity Banking & Saving Company. Wherefore he denies that there is any balance due to the Unity Banking & Saving Company by Holzman & Company, and that it is not fully protected for all its claims against Holzman & Company either by cash therefor, realized upon some of its collateral, or by other collateral securities not held by it exclusive of the certificate described in the amended petition.

Wherefore Richard Fritz prays as in his amended petition, that said certificate of fifty (50) shares of the Philip Carey Manufacturing Company Preferred Stock may be ordered delivered to him free of the claims of all parties and further, if the court should find that said the Unity Banking & Saving Company have any right or lien against said certificate and shares of stock claimed by said Richard Fritz, that other securities and collaterals held by the Unity Banking & Saving Company as collateral for those loans to Holzman & Company may be sold, and the proceeds subjected to the payment of such indebtedness prior to the sale of the said certificate and shares of stock claimed by Richard Fritz, and if the sum realized therefrom be sufficient to pay such indebtedness that said certificate may be ordered delivered to Richard Fritz and for such other relief as he may be entitled to.

Theo. Horstman,
Attorney for Richard Fritz.

State of Ohio, Hamilton County, ss:

Richard Fritz being duly sworn says that he believes the facts set forth above to be true.

Seal.

Richard Fritz.

Sworn to before me and subscribed in my presence this 7th day of December, A. D. 1905.

Theo. Horstman,
Notary Public, Hamilton County, O.

And afterwards, to-wit: on the 4th day of January, A. D. 1907, an entry was filed in the clerk's office of said court in this cause, which said entry is clothed in the words and figures following, to-wit:

Entry filed by referee on the 29th day of October, 1906.

Judgment entry and decree of referee, October 29, 1906.

Filed Oct. 29, 1906. Chas. T. Greve, Referee in Bankruptcy.

In the United States District Court, for the Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,
Bankrupts.
} In Bankruptcy. No. 3684.

Entry.

Upon the conclusion of the testimony offered on behalf of Richard Fritz, in chief, in support of his amended petition and claim herein, the Unity Banking & Savings Company by its counsel move the court to arrest the testimony and for judgment in its favor upon the evidence then before the court; on consideration whereof the court overrules said motion, to which ruling the Unity Banking & Savings Company then duly excepted.

And it is now ordered that this entry be made herein as of date of June 7, 1906.

Charles T. Greve,
Referee in Bankruptcy.

And afterwards, to-wit: on the 4th day of January, A. D. 1907, an entry was made upon the Journal of said court in this cause, which said entry is clothed in the words and figures following, to-wit:

Judgment entry October 29, 1906.

Filed Oct. 29, 1906. Chas. T. Greve, Referee in Bankruptcy.

In the United States District Court, for the Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,
Bankrupts.
} In Bankruptcy. No. 3684.

Judgment Entry.
Claim of Richard Fritz.

This cause came on for hearing on the amended petition of Richard Fritz for delivery of certificate for the Philip Carey Manufacturing Company preferred stock, etc., the answer of the Unity Banking & Saving Company thereto, the reply of Richard Fritz and the answer and re-

ply of H. P. Boyden, trustee and all the other pleadings and paper herein, and upon the evidence, and after argument by counsel this cause and claim were submitted to Charles T. Greve, referee.

On consideration whereof, the court, said Charles T. Greve, referee, find that Richard Fritz is the owner of the 50 shares of the preferred stock of the Philip Carey Manufacturing Company, and the certificate therefor described in the pleadings herein, and that he is entitled to the possession thereof free of all liens and interests therein of the Unity Banking & Saving Company and Henry P. Boyden, trustee in bankruptcy of Holzman & Company, and it is further ordered and decreed that said Richard Fritz hold said shares of stock and the certificate therefor free of all lien and interest therein on the part of the Unity Banking & Saving Company; and on the part of H. P. Boyden, trustee as aforesaid. And it is hereby further ordered that Henry P. Boyden, trustee in bankruptcy of Holzman & Company and the Unity Banking & Saving Company pay each one-half of the costs of this proceeding.

To all of which said Henry P. Boyden, trustee in bankruptcy of Holzman & Company and the Unity Banking & Saving Company by their counsel except.

And it thereupon appearing to the court that the Unity Banking & Saving Company has filed its petition for review of the orders and judgment herein, it is hereby further ordered that the said certificate of stock for the said 50 shares of the preferred stock of the Philip Carey Manufacturing Company remain and be in the custody of the said Charles T. Greve, referee, until a final determination of this case, and until a final determination of, and a final decision upon, the said petition for review.

Charles T. Greve,
Referee in Bankruptcy.

And afterwards, to-wit: on the 4th day of January, A. D., 1907, a petition for review was filed in the clerk's office of said court in this cause which said petition is clothed in the words and figures following, to-wit:

Petition for a Review of the Unity Banking & Saving Company, October 29th, 1906.

Filed October 29, '06. Chas. T. Greve, Referee in Bankruptcy.

In the United States District Court, for the Southern District of Ohio, Western Division.

In the Matter of Holzman & Company, Bankrupts. } No. 3684.

Claim of Richard Fritz.

Petition of the Unity Banking & Saving Company for Review of Order of Referee.

To the Hon. Charles T. Greve, Referee in Bankruptcy:

The Unity Banking and Saving Company, a corporation under the laws of Ohio, petitioner herein respectfully shows that prior to the bankruptcy proceedings herein, and for value then given, it received from the bankrupts in good faith as a portion of its collateral security pledged for loans to the bankrupts, a certain certificate, No. ten (10) for fifty shares of the preferred stock of the Philip Carey Manufacturing Company, all as more particularly set forth in its pleadings herein filed; that said bankrupts defaulted in the payment of said loans, and that there is now due and owing from the bankrupts to petitioner more than the value of said stock; that by the terms of the pledge the petitioner became entitled to said stock and to have it sold for the payment of its indebtedness; that nevertheless on the fourth day of August, 1905, Richard Fritz filed herein his proof of claim and petition, and thereafter on the fifth day of December, 1905, his amended petition whereby he sought a delivery into his possession of said stock and the certificate therefor, free of any and all claims of the trustee herein, and this petitioner thereto; that to said petitions of Richard Fritz, this petitioner interposed its several answers praying for the reasons, and because of the facts, therein set out, that it be adjudged lawfully entitled to retain said certificate of stock and to retain the proceeds of the sale of the stock represented by said certificate and to apply the same on the loans for which it was pledged for security and for other relief; that thereafter the issues on the pleadings herein, and the matters in controversy between said Richard Fritz and the United Banking and Saving Company, and the trustee in bankruptcy herein were submitted to the said Charles T. Greve, referee on the evidence adduced, and on arguments of counsel.

Whereupon on the 29th day of October, 1906, the said referee made an order and judgment prejudicial to petitioner, a copy of which is hereto attached and marked exhibit "A," and made a part hereof to which orders and judgment this petitioner, the Unity Banking and Savings Company, then and there duly excepted; that during said proceedings and upon the pleadings herein, said referee made other orders prejudicial to this petitioner, the Unity Banking and Saving Company, to which orders petitioner then and there duly excepted, all as shown by the record herein.

Your petitioner respectfully shows that said referee erred to its prejudice in making said orders in the following particulars:

1. That said referee erred in overruling the demurrer of the Unity Banking and Saving Company to the amended petition of Richard Fritz.

2. That said referee erred in striking out and excluding the testimony of Alfred Holzman with reference to the custom of brokers in regard to the pledging and repledging of collaterals, all as shown by the record herein.

3. That said referee erred in admitting testimony against the objection of the Unity Banking and Saving Company to which said company then and there excepted, all as shown by the record herein.

4. That said referee erred in excluding testimony, and in striking out testimony against the objection of the Unity Banking and Saving Company to which the Unity Banking and Saving Company then and there excepted, all as shown by the record herein.

5. That said referee erred in holding that the signature of Richard Fritz to the power of attorney, exhibit "J" to the transcript testimony herein, was and is not the signature of Richard Fritz and not made with his authority.

6. That said referee erred in not holding Richard Fritz to be estopped from claiming the said fifty shares of the preferred stock of the Philip Carey Manufacturing Company as against the Unity Banking and Saving Company as set forth in the answer of the Unity Banking and Saving Company to the amended petition of Richard Fritz.

7. That said referee erred in failing to hold that Richard Fritz had no standing in this court or any court of equity to claim said stock as against the Unity Banking and Saving Company.

8. That said referee erred in overruling the motion of the Unity Banking and Saving Company for judgment in its behalf at the close of the testimony for Richard Fritz.

9. That the evidence adduced before said referee shows that the Unity Banking and Saving Company and not Richard Fritz is entitled to the possession of said certificate and the proceeds of the sale of the fifty shares of the preferred stock of the Philip Carey Manufacturing Company represented by Certificate No. ten (10) and that the referee erred in holding and finding otherwise.

10. That the said referee erred in giving judgment for Richard Fritz.

11. The said referee erred in not rendering judgment for the Unity Banking and Saving Company, as prayed.

12. That said referee erred in other respects apparent on the face of the record.

Wherefore, your petitioner, the Unity Banking and Saving Company, feeling aggrieved because of such findings, judgments and orders and the errors therein, prays

that the papers, proceedings, findings, opinion, evidence and the transcript of the testimony herein, and the question raised by this petition may be certified to the District Court of the United States for the Southern District of Ohio, Western Division, the Hon. A. C. Thompson, judge, presiding, and that said findings and orders and judgment may be reviewed in accordance with the statutes and orders in such cases made and provided and that a final order may be made herein adjudging the said stock and the certificate therefor, and the proceeds of the sale thereof to the Unity Banking and Saving Company as prayed in its answer herein, and for all other and further relief to which petitioner, the Unity Banking and Saving Company, may be entitled.

The Union Banking & Saving Company,
By Chas. F. Goettheim, Secy.

Louis J. Dolle, Counsel for Petitioner.

State of Ohio, County of Hamilton, ss:

Charles F. Goettheim, being first duly sworn, deposes and says that he is the secretary of the Unity Banking and Saving Company, the petitioner herein, and that the statements in the foregoing petition are true according to the best of his information, knowledge and belief.

Charles F. Goettheim.

Sworn to before me and subscribed in my presence this 22nd day of October, 1906.

Harlow C. Ferrell.
Notary Public in and for Said County and State.

40c paid by Louis J. Dolle.

Exhibit "A."

In the United States District Court, for the Southern District of Ohio, Western Division.

In the Matter of Holzman & Company, Bankrupts. } In Bankruptcy. } 3684.

Judgment Entry.

Claim of Richard Fritz.

This cause came on for hearing on the amended petition of Richard Fritz for delivery of certificate for the Philip Carey Manufacturing Company preferred stock, etc., the answer of the Unity Banking & Saving Company thereto, the reply of Richard Fritz and the answer and reply of H. P. Boyden, trustee, and all the other pleadings and papers herein, and upon the evidence, and after argument by counsel this cause and claim were submitted to Charles T. Greve, Referee.

On consideration whereof, the court, said Charles T. Greve, referee, finds that Richard Fritz is the owner of the

50 shares of the preferred stock of the Philip Carey Manufacturing Company, and the certificate therefor described in the pleadings herein, and that he is entitled to the possession thereof free of all liens and interest therein of the Unity Banking & Saving Company and Henry P. Boyden, trustee in bankruptcy of Holzman & Company, and it is further ordered and decreed that said Richard Fritz hold said shares of stock and the certificate therefor free of all lien and interest therein on the part of the Unity Banking & Saving Company; and on the part of H. P. Boyden, trustee, as aforesaid. And it is hereby further ordered that Henry P. Boyden, trustee in bankruptcy of Holzman & Company, and the Unity Banking & Saving Company pay each one-half of the costs of this proceeding.

To all of which said Henry P. Boyden, trustee in bankruptcy of Holzman & Company and the Unity Banking & Saving Company by their counsel except.

And it thereupon appearing to the court that the Unity Banking & Saving Company has filed its petition for review of the orders and judgment herein, it is hereby further ordered that the said certificate of stock for the said 50 shares of the preferred stock of the Philip Carey Manufacturing Company remain and be in the custody of the said Charles T. Greve, referee, until a final determination of this case, and until a final determination of, and a final decision upon, the said petition for review.

And afterwards, to-wit: on the 4th day of January, A. D., 1907, the report and certificate of referee including opinion and all the testimony and all the exhibits introduced before the referee and attached to said report, were filed in the clerk's office of said court in this cause which said report, etc., are clothed in the words and figures following, to-wit:

Report and Certificate of Referee Including Opinion and All the Testimony, and All the Exhibits Introduced Before the Referee and Attached to Said Report.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of Holzman and Company, Bankrupt. } In Bankruptcy. No. 3684.

I, Charles T. Greve, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me, a certain entry was made of date October 29, 1906, hereinafter set forth, and that thereafter, on said 29th day of October, 1906, a petition for review was filed before me which is hereto attached. I

transmit herewith a statement of the conclusions of fact and law reached by the referee and the testimony and exhibits filed before me with relation to the matters involved in said entry, the same being all the evidence offered before me with relation thereto.

Charles T. Greve,
Referee in Bankruptcy.

Holzman and Company were brokers doing business in Cincinnati. On May 25, 1905, the firm made an assignment for the benefit of the creditors and thereafter on July 1, 1905, upon proceedings instituted on May 26, 1905, said firm was adjudicated bankrupt. Richard Fritz was dealing with the brokerage firm as a customer, and some time in May, probably the 13th, "he placed in the hands of Ross Holzman, a member of the firm, a certain certificate (Ex. 1) No. 10 for 50 shares of $100.00 each in the preferred stock of the Philip Carey Manufacturing Company of Lockland, Ohio, said certificate being in the name of Fritz Brothers and endorsed upon the back: For value received I, the undersigned, hereby sell and transfer to Richard Fritz fifty shares of stock within mentioned and described and hereby appoint
true and lawful attorney irrevocable, with power and substitution to transfer said stock on the books of the company.

Witness hand and seal this 5th day of January, 1905.

Fritz Bros., per
Otto Fritz."

Witness, Max Winkler."

On May 15, 1905, this certificate of stock was pledged by Holzman and Co. with the Unity Banking and Savings Company as a substituted security upon a note of March 21, 1905, for $10,000 executed by the firm to the bank, other security practically corresponding in value being withdrawn by Holzman and Company at the time of the substitution. (Ex. 4.) At the time this certificate was pledged by Ross Holzman the active member of the brokerage firm with the bank, there was pinned to it a power of attorney (Ex. J.) purporting to have been signed on May 13, 1905, by Richard Fritz in the presence of Ross Holzman. None of the blanks of the power of acknowledgment are filled and the only writing on the paper includes the date, the names "Richard Fritz" in the blank for the signature and "Ross Holzman" in the blank for the attestation. It seems to be admitted that the signature of Ross Holzman is genuine. Ross Holzman is and has been since the date of the bankruptcy beyond the jurisdiction

of this court and his whereabouts are supposedly unknown.

Richard Fritz testified that he did not sign the power of attorney or authorize anyone to sign it for him. The testimony of several witnesses qualifying to more or less familiarity with the signature of Fritz was received, the objections to their qualifications being regarded by the referee as going to the weight rather than the competency of their evidence. In the main this testimony although not impressive was to the effect that the signature attached to the power of attorney was not that of Mr. Fritz. Certain signatures admittedly those of Mr. Fritz were also introduced by the parties by consent for the purposes of comparison.

I. Upon the evidence the referee found that Mr. Fritz did not sign nor authorize the signature to the power of attorney in question.

II. The evidence with regard to the custody of the stock by Holzman and Company can be summarized as follows:

Fritz had been dealing with and through Holzman and Company for several years; his dealings were practically all with Ross Holzman and the senior member.

The Carey certificate was first placed with Holzman and Company in April and afterwards returned. Sometime in May "about the 10th or 20th, probably 15th" (p. 66), "it was given to Holzman the second time."

"I told Holzman, that I place this stock for convenience in your hands to show you that if I get in up to my margin, I can make good if I am called upon. He had this stock and also the Fritz stock. Holzman said that would be all right and I left the stock on those conditions."

(Q.) Now at any time after that, did he call on you for any money? (A.) No, sir."

(Page 67) Q. "When did you get back your Fritz Brothers' certificate?

A. "That was shortly before he went into bankruptcy, before he made the assignment."

Q. "You say there had been no signature with reference to that?

A. "No, sir."

Q. "330 shares, what was that worth?

A. "The par value $33,000.

Q. "Are they worth that?

A. "Twice that; 14 per cent stocks."

Mr. Fritz testified further that he demanded of Ross Holzman several times before the failure the return of the Carey certificate and (p. 68) "he told me he would get it and get it from day to day and he never produced it."

"He never told me at any time it was out of his possession and he would go and get for me. He never told me it was out of his possession."

"When I left the stock there, I told him not to let it out of his possession, that if ever he got so that they wanted money I would furnish it. I left it there for convenience, to show that I could make good at any time for extra margin. I left it there with them, but he never called for any particular margin."

Once before in April the Carey certificate had been left with Holzman "same benefit as this second time, for convenience" (p. 69) "for credit" "of $10,000" "unsigned" " the same identical way." (p. 70).

Mr. Fritz testified that the 330 shares of Fritz stock was also left with Holzman unsigned at about the same time the Carey stock was left and with the same arrangement. This he recovered before the bankruptcy (p 71, 72).

He had also "the first time I had a transaction" given 50 shares of C. N. & C. stock "signed in blank" (p. 70). This was squarely pledged for a loan, and being repledged by Holzman was credited to Fritz's account.

Mr. Fritz was examined and re-examined as to the circumstances of his leaving the Carey stock with Holzman, but the result was in the main as above given. A summary of this examination would involve repeating a large part of the record.

Counsel for the Unity Banking and Savings Company examined him also at length as to the state of his account at various times and especially at the time the stock was left with Holzman; also with reference to statements received by him, in which mention is made of the Carey stock. This account is contained in "Ex. A. Unity" and "Ex. B. Unity." The statements include Ex. 13, 14, and 15. Ex. 13 of date April 25, 1905 in which the balance figured to May 1st was to Fritz's credit $1,900.99.

At the end of the statement appeared,

"Long 50 Carey Pfd.
50 C. N. & C. Pfd."

This Fritz explained as meaning "That belonged to me, that is what it meant. That is all I understood." It meant long, that it was still my stock." 4.

Ex. 15 of date Apr. 30, 1905 shows a balance due from Fritz of $1,729.20.

The same statement, "Long 50 Carey Pfd.
50 C. N. & C. Pfd.", appears in this statement.

Ex. 14, dated in ink May 31, 1905, modified in pencil to May 21, 1905 was not given to Fritz until after the as-

signment and the filing of the bankruptcy petition. In this Fritz is credited on May 15, 1906 "50 Carey Pfd. rec'd" but no amount is carried out. The balance is in his favor $879.98 May 19, 1905, with no allowance for the Carey stock and against him on May 25th $970.02. The statement concludes.

"50 Carey Pfd.
50 C. N. & C. Pfd.
on hand."

See Ex. 14 at length.

The C. N. & C. was worth $4,500 and the Carey $5,500.

An examination of the Fritz account shows that he was dealing heavily in stocks throughout May nearly up to the time of the close of the Holzman business on May 25th and that at times there were on transactions under way large balances against him, altho' at the end he was a creditor of the firm (without considering the Carey stock) as a result of the sale of the C. N. & C. to an amount of $3,580 (see statement and p. 115).

On May 13th he owed Holzman and Company about $15,500 and on the 15th when the Carey stock was pledged to the bank by Holzman, he owed Holzman $16,500.

The referee rejected evidence tending to show a usage of brokers to re-hypothecate stocks pledged with them not shown to be known, or communicated to Fritz on the ground that an express contract can not be contradicted by usage, and particularly that the usage referred to did not refer to stocks deposited as in this case.

The referee found as a fact that.

II. The Carey stock was deposited with Holzman and Company upon an express contract that it was simply to be held to show Fritz's responsibility and not to pass out of Holzman's possession and that at no time was any demand made upon him or notice served upon him changing the conditions of this contract, and,

III. At the conclusion of the dealings between Fritz and Holzman and Company, Fritz was a creditor of Holzman and Company not a debtor.

Finding of law.

The referee finds as a conclusion of law from the foregoing conclusions of fact that:

Where F. deposits with a broker a certificate of stock belonging to F. and in his name, without any endorsement or power to execute or transfer of said stock, upon an agreement that said stock is to be held by said broker as an evidence of F's financial responsibility only and is not to leave the broker's possession, and the broker pledges said certificate to a bank as security upon a note of the broker

for money loaned by the bank to the broker for general use of the broker, the bank holds said certificate, subject to all the conditions of the original deposit by F with the broker, and F is not estopped to claim title to said certificate as against the bank by the mere placing of said certificate in the hands of the broker or the further fact that in the course of dealings between F and the broker, large balances have at various times been owed by F to the broker when it appears that no demand for the payment of said balances was made upon F or notice served upon him charging the conditions of the deposit of said stock and further that at the conclusion of the dealings between F and the broker, F is a creditor and not a debtor of said broker.

Filings with the Referee.

Aug. 4, 1905. Claim of R. Fritz with supplemental affidavit.

October 23, 1905. Answer of Trustee filed.

October 28, 1905. Answer of Unity Banking and Savings Co.

October 31, 1905. Reply of R. Fritz filed.

October 31, 1905. Motion of Unity B. & S. Co. filed to strike out.

October 31, 1905. Entry overruling said motion.

October 31, 1905. Reply of Trustee filed.

Dec. 5, 1905. Leave granted Fritz to file Amended Petition.

Dec. 5, 1905. Amended Petition of Fritz filed with Referee.

Dec. 5, 1905. Demurrer of Unity B. & S. Co. filed.

Dec. 5, 1905. Entry overruling demurrer.

Dec. 7, 1905. Answer of Unity B. & S. Co. to amended petition of R. Fritz filed.

Dec. 7, 1905. Reply of Trustee to Answer of Unity B. & S. Co. filed.

Reply of R. Fritz filed.

June 7, 1906. Motion of R. Fritz for judgment and entry overruling same.

October 29, 1906. Judgment entry.

October 29, 1906. Petition for Review filed.

United States District Court, for the Southern District of Ohio:

In the Matter of
Holzman & Company,
Bankrupt.
} No. 3684.

The question that first presents itself is that of the genuineness of the signature to the power of attorney attached to the certificate of stock at the time the stock was

pledged to the bank by Ross Holzman. The evidence upon this point is the testimony of Richard Fritz himself, and of a number of other persons who qualified by showing a greater or less degree of familiarity with the signature of Fritz and a number of admitted signatures of Fritz, some in the case for other purposes, some written by Fritz on the stand and several offered without objection or subject to objection which are not in the case for any other purpose. As to these latter signatures the referee is of opinion that the rule in the Federal Court is clear that papers to be competent must be such as are already in the case for purposes other than those of comparison. It seems to be agreed between the parties that these few papers can be considered by the referee and the referee has examined them but in his judgment they add nothing to the determination of the question and have been of no value in aiding him in coming to a conclusion.

The only other evidence claimed to bear on this point is contained in a statement made by Alfred Holzman, a witness, offered by Fritz as to a remark made to him by his brother, Ross. The referee is clearly of the opinion that this statement is incompetent for reasons that are obvious. An argument is made too that the claim that the signature is spurious is inconsistent with the obvious facts of the case.

No questions of fact are more difficult of determination than those relating to the genuineness of handwriting. The rule with regard to the admissibility of expert testimony varies in different jurisdictions, but everywhere, whatever opinion evidence is regarded as admissible is held to be entitled to but slight weight as compared with the positive statements of persons in position to know the actual fact. The evidence offered in this case by persons other than Mr. Fritz serves to illustrate the uncertainty of such opinion with one rather remarkable exception, however, every witness testified that he did not believe in the genuineness of the signature in question although on cross- examination there was sufficient inconsistency to show the uncertainty of such judgment even by persons knowing the handwriting of the person whose signature is under consideration.

Mr. Fritz himself testifies plainly that the signature is not his, nor authorized by him. The claim that the circumstances contradict such a position does not seem of great force but rather a generalization than an argument. The suggestion is made by counsel for the bank that the presumption is against the commission of a crime. The same presumption would apply to the testimony of Mr. Fritz, a witness, under oath. Besides presumption will not avail

against positive testimony, particularly where the point in question is the very issue, or one of the issues in the cause. One suing upon a promissory note in a case where the alleged maker denies his signature would hardly suggest that the presumption against the commission of a crime would go very far against the positive statement of the alleged maker that the signature is not his own..

We have then in this case the positive statement of Mr. Fritz that he did not sign the power of attorney, did not authorize the signature, accompanied by the statement of a number of witnesses who qualified as being more or less familiar with his signature, that they did not think the signature in question genuine with absolutely no evidence to the contrary, nor even any evidence to suggest any serious doubt apart from the manifest failure of the one witness, above referred to, which failure certainly can do no more than negative his evidence in chief.

After all, however, it is for the court or the jury to make the comparison and come to the conclusion. It certainly would have to be a remarkable similarity in handwriting that would lead a court or jury to find in the absence of any evidence contradicting the sworn statement of the party whose signature is under consideration, that the signature was in fact genuine.

The referee is conscious of the difficulties of determining the question of authenticity of handwriting and does not feel possessed of any especial qualification in this particular. For the same reason he is not much impressed with the opinion of witnesses on this subject. The referee has, however, made a very careful comparison of the signature on the power of attorney and the signature written by Mr. Fritz in his presence as well as these admitted in evidence in the case for other purposes and has also compared the signatures used as tests. His comparison has been made both on the basis of the signatures as a totality and upon the basis of the particular letters used in forming the name. It is obvious that Mr. Fritz wrote his name in several ways, varying with the circumstances and the purposes of the signing. There seems, however, to be certain points of resemblance running through all the signatures, particularly in the forming of certain letters. There is perhaps no greater diversity than exists in the signature of most busy men.

But in the judgment of the referee there is no resemblance in any important feature in the signature to the power of attorney and any other signature before the court. While one or two letters may be written as are the same letters in other signatures the possible resem-

blance seems that of the letters themselves rather than of the way of writing them. Both the first impression of the referee and that as the result of careful comparison of the signatures as an entirety, and letter by letter, lead to the judgment that the signature in issue is not genuine.

In fact, although fully conscious of the great possibility of error in such cases and the almost entire unreliability of judgments based upon comparison of handwriting, the referee is inclined to the belief that in the absence of any testimony upon the point and with no other evidence before him but the disputed signature and those admittedly genuine, his finding would be that the signature on the power of attorney was not written by the same man that wrote the other signature.

With the uncontradicted statement of Mr. Fritz, the unanimous opinion of these claiming familiarity with Mr. Fritz's writing practically shaken, on cross examination in but one instance, and what seems to the referee the obvious dissimilarity of the signatures the referee can come to but one conclusion, that is that the signature on the power of attorney attached to the Carey certificate of stock is not the signature of Richard Fritz.

Mr. Fritz says further that he did not authorize any one to sign the power of attorney for him and this evidence is not contradicted. There is in fact no evidence that the power of attorney was ever executed with reference to this particular stock or attached to it at any time prior to its hypothecation by Ross Holzman with the Unity Bank.

Counsel for the bank urge that the rule of criminal evidence that a forgery must be proved beyond a reasonable doubt applies in this case. A reasonable doubt is one that has something to support it. It can only arise when the evidence to prove the fact in question is consistent with some other theory than the one it naturally tends to support. However, the rule (although if applied here it could not change the result) has no application in a civil case. The preponderance of evidence alone controls in civil causes. In this cause the burden of proving the genuineness of the signature is clearly upon the one who would fail if that genuineness is not established, in this instance so far as this point is concerned, the bank. Suppose there was no evidence at all in the cause upon the disputed question of the genuineness of the signature. The bank would certainly fail in the establishment of the claim that the signature is the genuine signature of Richard Fritz.

The power of attorney therefore disappears from the case and the rights of the parties must be determined as if it had never existed.

11. This brings us to the consideration of the case of a certificate of stock issued to Fritz Brothers and assigned (with a power of attorney accompanying the assignment on the printed form on the back of the certificate) to Richard Fritz but with no other evidence of change of title on the instrument itself. The stock is still in the name of Fritz Brothers and has not been transferred on the books of the company to Richard Fritz, to whom the certificate, and hence the ownership of the stock, was transferred prior to its appearance in this controversy.

Estoppel of Fritz.

It is claimed however, that even if the power of attorney is left out of consideration in the case, Fritz is estopped to deny the claim of the bany on the ground that he so acted as to permit an innocent party, the bank, to be misled to its injury.

The principle is a familiar one and has been expressly sanctioned by decisions in our own state.

Board of Education vs. Sint, 41, O. St. 504, 513.

Schutz vs. Colvin, 55 O. St. 274, 286.

Lickbarrow vs. Mason, 2 D. & E. 70.

Osborn vs. McClelland, 43 O. St. 284, 301, 305.

Pomeroy Equity Juris. 698, 711.

C. N. O. & T. P. vs. Citizens Bank, 56. O. St. 351, 381

Krebs vs. Forbriger, 21 Bull 313.

It is this principle that is invoked in the case of a holder for value of stock, legally owned by one "who has conferred upon another by a written transfer all the indicia of ownership of property." In such a case the rights of the bona fide holder as against the true owner depend upon the estoppel to assert title against one who has been misled by the act of the true owner.

1 Dos Passos Stock Brokers (2nd Ed.) p. 707.

The cases of Krebs vs. Forbriger, 21 Bull. 313.

Combes vs. Chandler, 33 Ohio St. 178 and Osborne vs. McClelland, 43 O. St. 306 illustrate clearly to what extent the doctrine applies in Ohio as well as its limitations.

Krebs vs. Forbriger 21 Bull, 313-314.

"As between the pledgor and the pledgee of stock, the pledgee holds neither the equitable nor the legal title, but only a special property. And so in Henkle v. Salem Mfg. Company 39 Ohio St. 553, it was held that the pledgee of stock who had transferred the stock into his name on

the books of the company was not liable as the equitable owner of the stock to creditors of the corporation. But it is to be borne in mind that although as between pledgor and pledgee, the pledgee had only the special property, the pledgor had given to the pledgee all the indicia of full equitable title by a written assignment with an irrevocable power to confer the legal title. The Supreme Court Commission of Ohio, in Combes v. Chandler, 33 Ohio St. 185 quotes the following from Pomery on Legal Remedies, 160. "The owner of certain things in action not technically negotiable but which, in the course of business customs, have acquired a semi-negotiable character as a matter of fact, may assign or part with them for a special purpose, and at the same time may clothe the assignee, or person to whom they have been delivered, with such apparent indicia of title, and instruments of complete ownership over them and power to dispose of them, as to estop himself from setting up against a second assignee, to whom the securities have been transferred in good faith, for value, the fact that the title of the first holder was not absolute and perfect. In the case referred to, the principle was applied to a non-negotiable note, which had been assigned to bona fide purchaser by a fraudulent endorsee. There is also cited by the Court, in support of this principle, and therefore with apparent approval, a case from New York, in which the rule was applied to stock assigned by endorsement with irrevocable power of attorney to transfer. McNeil v. Tenth Nat. Bk. 46 N. Y. 325. The application of the principle to the particular facts of Combes v. Chandler may have been somewhat blown upon in Osborn v. McClelland, 43 Ohio St., but we do not understand the Supreme Court in the last named case to dissent from the case of McNeil v. Tenth Nat. Bank, or the principle as stated by Pomeroy. But it is said that this is only the doctrine of bona fide purchaser for value in equity, and that it can only apply in favor of the holder of the legal title; Anketel v. Converse, 17 Ohio St. 11, and that in New York the endorsee of a certificate of stock without transfer holds the legal title, while in Ohio, he only holds the equitable title. Conant vs. Seneca Co. Bank, 1 Ohio St. 298. It is to be observed, however, that the pledgee in this case held more than a mere assignment of the stock in blank, and thus the apparent equitable title. She also held an irrevocable power of attorney in blank, with power of substitution to make transfer of the legal title. The holder of the legal title has thereby estopped himself to assert any control

over the legal title against an assignee of the certificate for value from the payee.

"Therefore, it is not material with reference to the rights of a bona fide purchaser of such a certificate so indorsed, whether his assignor held the equitable title with full power to dispose of the legal title conferred by its holder, or had the apparent legal and equitable title in himself. The authorities, with regard to the rights of an innocent purchaser for value of stock so endorsed, are numerous, and are found not only in states where the endorsee of a certificate holds the full legal title, but also in such states as New Jersey and Illinois, where he holds only the equitable title. Mt. Holly Co. v. Ferree, et al, 17 N. J. Eq. 117; Otis v. Gardner, 105 Ill. 436; Cook on Stock and Stockholders, Section 473, and cases cited."

In Combes vs. Chandler (33 O. St. 178) the principle is discussed at great length with copious citations, particularly on pages 184 and 185.

Here one Thompson executed certain notes to Combes. The notes were not negotiable. Combes afterwards transferred them by a written endorsement in blank to Chandler in a trade which was a fraud as against Combes. Chandler transferred them to Woods for value. Woods had no notice of the fraud upon Combes. Combes subsequently claims the notes against all parties.

The right of Woods the bona fide purchaser for value is supported upon the principle of estoppel referred to because "the owner (Combes) by his own affirmative act, has conferred the apparent title and absolute ownership upon another, upon the faith of which the chose in action has been purchased for value, that he is precluded from asserting his real title" (p. 185) Combes "transferred them to Chandler giving them all the indicia of ownership with full power to sell, transfer or do with them whatever they would. It was Combes' intention to part with the paper; he did it voluntarily, intending that Chandler should take full title and ownership."

In the Krebs case, a case of stock, "not technically negotiable, but which may acquire a semi-negotiable character" the pledgee held not only the apparent equitable title but an irrevocable power of attorney in blank with power of substitution to make transfer of the legal title. Here the owner was held to be estopped to assert any control over the legal title against an assignee for value and it was held immaterial whether the assignor to the bona fide purchaser held the true equitable title with full power to dispose of the legal title or had the apparent legal and equitable title in himself.

In Osborn vs. McClelland, 43 O. St. 284, Mrs. Osborn executed a note to Mrs. Faxon, her daughter (secured by mortgage.) Mrs. Faxon before maturity endorsed (in blank) and delivered the note and mortgage to Bartlet & Smith, bankers, as an accommodation for a period of thirty days. Bartlet died and Smith, the surviving partner, took possession of the note, etc., and after maturity hypothecated them to McCelland for a loan, McClelland taking them in the belief that Smith was the owner and had full power to convey. The endorsement to B. & S. was in blank and the court finds as a fact that McClelland took the note "upon observing the blank endorsement of Mrs. Faxon on the note, supposing the note and mortgage were the property of Bartlet & Smith and upon the faith and belief that Smith was the owner of the note."

It was also found that Bartlet & Smith had executed a receipt showing that the note was to be returned or accounted for to Mrs. Faxon, but that she had no knowledge of it and—"it cannot affect her rights, especially as it was not known to Mrs. McClelland until after he acquired the note." "He took the note upon the evidence alone of Mrs. Faxon's endorsement and the presumption arising from possession."

"The court restricts the theory that "where one of two innocent parties must suffer, the one that so acts as to give rise to the injury, rather than the one who is not to blame, should be the loser," to the case of a bona fide holder for value of a negotiable instrument negotiated before maturity (p. 298) and says that after maturity "the purchaser takes only the title which his transferrer or indorser had."

The claim of estoppel was urged "that (Mrs. F.) having endorsed this note before due, and left it with B. & S., she clothed them with the indicia of title and enabled them to negotiate it after due to a holder free from the right of the real owner."

In discussing this claim the Court reasons by analogy to stock transactions, "Thus the owner of stock, who executes a transfer of the same in blank, with power of attorney authorizing a transfer on the books of the corporation, and places it in the hands of a broker for sale or uses it as collateral, and the holder of this apparent title abuses his trust and sells it to a bona fide purchaser for value, the owner is said to be estopped to claim the stock as against such holder."

This illustration is given to show that the estoppel arises only where the real owner does something which purports to clothe the holder from whom title is taken with absolute ownership and the distinction is taken be-

tween this case and the Combes case upon the ground that Combes had intended and did confer "full title and ownership with power to alien absolutely."

The Court held that tho' Mrs. Faxon was careless in allowing Smith to remain a bailee of the paper, "such bailee can confer no better title than he actually had."

Dueber Watch Case Mfg. Co. vs. Daugherty et al., 62 O. St. 589.

"One who for his own purposes places the legal title to his property in another must take the hazard of any loss that may result from his dealing with it as his own, so far as innocent third parties are concerned. On principles of natural justice his equity is inferior to that of any person who acquires in good faith any title to the property."

3. It is now generally conceded that the assignment of a certificate of stock with power of attorney to have it transferred on the books of the company, gives to the assignee the status of a legal owner of the stock."

It is apparent that the principle at the basis of the estoppel in cases of this class, has nothing particularly to do with the law of pledges or stock certificates. It is based on the theory that an owner who has placed property in the hands of another under such conditions as imply, not merely the right of possession or any equitable claim to ownership, but absolute legal ownership, can not be permitted to assert a claim against one, who in good faith, relying upon what are practically representations, has advanced something of value for the property. The gist of the whole estoppel is the apparent absolute legal ownership of the person in whose custody the property is left. It does not depend in any sense upon the relative rights as between each other, of the real owner and the person upon whom he has conferred the indicia of ownership.

The bank seeks to extend this principle of estoppel beyond the cases cited as follows:

"The argument is this; the dealings of Richard Fritz with Holzman and Company amounted to an equitable pledging of the stock. Brokers have an implied authority to rehypothecate collateral pledged to them. Richard Fritz enabled Holzman and Company to hold themselves out as lawfully in possession of the stock as brokers, hence, The Unity Banking and Saving Company had a right to rely on such lawful possession of Holzman and Company."

The argument seems defective in this, that, although

each of the particular premises might be admitted, the conclusion in no way necessarily follows.

The different parts of the argument may be taken up in order.

First, it is claimed that the dealings of Richard Fritz with Holzman and Company, amounted to an equitable pledging of stock. This is to some extent a question of evidence and of law as a conclusion from the facts.

That in Ohio and elsewhere, a certificate of stock itself is subject to what might be called an equitable hypothecation, seems perfectly clear and is not disputed in other words, one may give another such a right in his property or evidence of property without actually conveying legal title, as would entitle that other to invoke the aid of a Court of Equity to require the legal title to be transferred. Strictly speaking a contract of pledge of a certificate of stock, can only be made in writing.

Thompson on Corporations, Vol. II, Sec. 2622.

Where the relations of parties show clearly that the contract was to pass the legal title, the mere failure to execute the necessary conveyances can be rectified in a Court of Equity. To entitle one to a decree in such a case, of course all the equity of a transaction must be inquired into. As between two contesting equities, that which has the legal estate, or acquires the best right to a legal estate is entitled to priority, especially if prior in time.

Hume vs. Dixon, 37 O. S. 66.

Dueber Mfg. Co. vs. Daughterty, 62 O. S. 589.

Q. So far as the equities therefore are concerned, here is a contest between one vested with the legal title of a chose in action, who claims that his property, has contrary to the contract under which it was held in custody by another person been turned over to a third person for value with no knowledge whatever of the actual contract relations between him and his custodian, but with actual notice upon the face of the paper evidencing his property, that the legal title was in him, or that he had a power of attorney from the person holding the legal title to place the title in himself. Surely, under such circumstances, he who relied upon his equitable rights would be obliged to give full force to the equitable rights of the one prior in time.

Connected with this proposition is the second phase of the argument, that brokers have an implied authority to rehypothecate collateral pledged to them. A large number of cases is cited to sustain this proposition.

The argument is made that from the nature of his position a broker is obliged to advance from day to day, large sums of money to carry out the orders of his customers. His purchases on the New York Stock Exchange are invariably made in his own name, and must be delivered under the usual method of sale on the following day. Such being the case, the custom has grown up against the stock purchased by him for his customers, and taken in his own name for the purpose of obtaining money to carry on his business. He is not obliged to keep any particular purchase of stock separate from other purchases, and in fact the custom seems to be that not only is the stock actually purchased by the broker in his own name, it being improper to give the name of the real purchaser, but it is retained in his own name. The only obligation of the broker is that he shall keep on hand a sufficient supply of stock of the class purchased for his client, to enable himself, upon proper demand and payments, to turn to the customer a certificate, the evidence of ownership of the stock.

The very reason given in the quotation by Dos Passos, page 250 is "Although in law the securities are regarded as the client's, the broker's money has paid for them."

He really has an interest as an owner in them, and whether this be true or not so far as third parties are concerned, the owner is estopped from complaining of his transfer because he has permitted the legal title and custody to remain in the possession of the broker. A careful analysis of the cases cited on this proposition would show that in almost every instance they are limited to stock purchased and paid for by the broker and placed in his own name with the obligation that whenever the client shall call for a certificate of the stock and tender payment, then for the first time must the broker give him the evidence of ownership. While these cases uphold the right to rehypothecate stock purchased in this way, they do not in any way do it to the extent of permitting the broker to rehypothecate a pledge under conditions other than those of the original pledge. It is true that in some of the cases it is apparent that the rights of third parties have intervened and that the broker is unable to comply with this contract by reason of having failed to keep on hand a proper amount of stock to make good to the customer, but in each of these cases the rights of the third person come from the estoppel already referred to and not as inherent in rehypothecation, or there has been a special

contract permitting the rehypothecation of the stock. In one of the cases cited, Skiff vs. Stoddard 63, Conn. 198, which was a case presenting every phase of the business of stock brokers, stock pledged to secure margins was particularly distinguished from stock purchased for the client in the broker's name and held as security for the purchase price. "The pledgee in the absence of authority, express or implied, is not permitted to repledge as security for his own debt." Page 231.

Another case, the well known case of Lawrence vs. Maxwell, 53 N. Y. 19, has this line at page 22, "ordinarily and in the absence of any agreement or assent by the pledgor, the pledgee has no right to use the thing pledged, and the use of it would be illegal." The testimony of Fritz hereafter set forth shows the absence of any such agreement and in fact an agreement which is in entire derogation of any such custom as referred to so that the evidence of the custom is not competent to bind Fritz.

In another case cited by counsel, Sillcocks vs. Callaudet, 21 N. Y. Sup. 552, the distinction is clearly made between stocks purchased by the broker and those deposited on margin.

In fact a careful analysis of cases cited which the referee has prepared shows that they do not support the proposition that security deposited with the broker as collateral on the margins necessary to be advanced in the purchase of other securities in the absence of an agreement in the contract of pledge, either express or implied, could be rehypothecated in any way that would discharge them from the terms of the original pledge.

That a pledgee may assign over his contract to another person seems clear. "It has long been admitted that a pledgee may assign over the pledge so that the assignee shall take it subject to all the responsibilities under the original pledge transaction or may deliver it into the hands of a stranger for safe custody; or may assign in form for his own purpose of enforcement, or may convey his interest conditionally by way of pledge to another person; in all of which cases his security will not be destroyed or impaired."

The right is here more largely conceded than in the case of a mere lien claimant, but "any such act on the pledgee's part is understood to be subject to all the original restrictions; for to attempt to pledge property beyond the pledgee's own demand; or to make transfer as though he were the absolute owner, is regarded as a breach of trust and a fraud upon the original pledgor, so that the pledgee's

creditors can in general acquire no title in the property beyond that of the original pledgee himself * * * wherever the true intendment of the transaction was to restrain the original security to the pledgee personally, that intendment must prevail."

Schuler, 3 Ed., par. 218.

See Cowdrey vs. Vanderburg, 101 U. S. 923.

"That the purchasers of non-negotiable demands like the certificate here from others than the original owner of them can take only such rights as he has parted with, except when by his acts he is estopped from asserting his original claim is established by all the authorities. He must in such case as Lord Thurlow said, abide by the case of the person from whom he buys."

In this case the certificate of a government auditor was pledged as collateral with a blank endorsement to secure an advance of much less than its value. Pledgee transferred it to Cowdry who alleged that he purchased it in the ordinary course of business of a broker; that he was ignorant of the original transaction and claimed protection as a bona fide holder for value without notice.

The court says "if the pledgee B. had written over the blank endorsement of the complainants a formal assignment to himself of the claim and in that form had sold the certificate to Cowdrey for value, it is possible that the latter might have successfully insisted that the complainants were estopped from asserting as against him, ownership of the claim. The principle is well settled that when the owner of property in any form clothes another with the apparent title or power of disposition and third parties are thereby induced to deal with him, they shall be protected." (Citing McNeil v. 10th Nat. Bank, 46 N. Y. 325).

The general principle as stated here must of course be limited by the subject matter of the case, a certificate which in its nature is unassignable as is a certificate of stock. A mere indorsement in blank would not necessarily transfer any legal title, while on a stock certificate the printed form is an assignment and a power to convey the title.

Scollans vs. Rollins, 173 Mass. 275.

A registered bond payable to Wm. Scollans with an assignment in blank and an authorization of transfer signed by Wm. Scollans belonged to Thos. J. Scollans who gave it to Gage for safekeeping. Gage sold it for value to Rollins, who filled in the blank assignment. Held: T. J. Scollan was not estopped from claiming property as against Rollins.

See for an extreme case.

Shropshire Union Rys. vs. Queen L. R. 7 H. L. C. 496.

The third proposition is that Richard Fritz enabled Holzman and Company to hold themselves out as lawfully in possession of the stock as brokers. The certificate of stock indicating clearly as it would, that the title had not passed to Holzman & Company, certainly put one dealing in that stock upon inquiry as to the terms of the holdings of Holzman and Company. Whatever rights Holzman and Company had against Richard Fritz would pass of course to the bank. The bank can claim no estoppel beyond that implied upon the face of the paper and the circumstances of its custody. No representation of any sort on the part of Fritz is claimed to have been made to the bank and if the power of attorney and its signature disappears in the case, the bank stands absolutely in the shoes of Holzman and Company.

Upon the question as to the terms upon which Holzman and Company held the certificate of Carey stock we have only the testimony of Fritz.

Counsel on all sides have examined him at great length upon the matter but his general statement is in no respect changed by repeated examinations. While there seems a little confusion and some apparent contradiction with relation to the first deposit of the Carey, there is nothing with relation to that of May 13, or thereabouts. The stock has apparently been returned to Fritz on May 8 (p. 41) at which time the first transaction had closed. On the 13th it was again placed in Holzman's hands, pledged with the Unity Bank on the 15th and on the 23rd Fritz demanded its return which demand was repeated from time to time until after the bankruptcy proceedings began.

As the referee understands the testimony no statement was handed to Mr. Fritz between May 13th and a time much later than the assignment which was on May 25th (the statement dated May 21 and 31 was not given to Fritz until after the assignment and merely purports to show the state of the account on the 21st, but not to have been delivered to him at that time (p. 50). The other statements were given at a time when the Carey stock was held upon the conditions of the first deposit and can only refer to that. In any event the entries are as susceptible of being interpreted in favor of Mr. Fritz's view that they simply meant that they belonged to him as in any other way.

The condition of the Holzman holding must therefore be gathered from Mr. Fritz's testimony:

P. 66: "I told Holzman that I place this stock for convenience in your hands to show you that if I got in up to my margin I can make good if I am called upon. He had this stock and also the Fritz stock. Holzman said that would be all right and I left the stock on those conditions.

Q. Now at any time after that did he call on you for any money?

A. No, sir.

Q. Did he at any time call on you for any money that you did not forthwith pay?

A. I generally paid it as soon as he called on me, probably a day later. Generally I paid whatever he called on me for."

Shortly before the failure, began the demands for the stock to which Holzman in no instance gave any intimation that any claim was made against it nor that it had been disposed of.

68. "He never told me at any time it was out of his possession and he would go and get it for me. He never told me it was out of his possession.

* * * * *

"When I left the stock there, I told him not to let it out of his possession, that if ever he got so that they wanted money I would furnish it. I left it there for convenience to show that I could make good at any time for an extra margin. I left it there with them, but he never called for any particular margin." * * * "He said it was all right."

76. Upon cross-examination there is practically no change in the statement.

87 "I wanted to show that I could make good.

Q. If your margin was to go down, they were to use that certificate?

A. They were to tell me and I would make good.

Q. How could they tell when you were not in the city?

A. They could wait a day or so.

Q. Then if that were so, and you expected them to carry you a day or two, why did you take the collateral there at all?

A. I gave it to them in the first place to show I could make good."

It might be claimed that this is an argument or a statement of Mr. Fritz's understanding of the contract rather than testimony as to the contract itself, but it is brought out by cross-examination.

Q. (91-2) "If the market had gone down and you were absent from the city and Holzman and Company had not the money to protect the purchases, were they to settle your stock? (Sell?)

A. No, sir.

Q. Who was to protect it under these conditions?

A. I was to, myself. They were to call on me and I would make good.

Q. If you were absent?

A. They had enough stock to show I was responsible many times. We carried over many days, a week or so."

On page 108 is again a direct denial of any call for margins at the time this stock was pledged to the bank.

This is thought to be a fair statement of Mr. Fritz's version of the contract. Counsel for the bank characterizes these statements as "dubious expressions." It must be confessed that there seems very little that is dubious about them. The statements are true or not true. If true, the contract is clear. If untrue the terms of the contract must be gathered from the circumstances. Do the circumstances afford any light that tend to contradict these statements?

That Mr. Fritz was dealing heavily in stocks to such an extent as to require large advances of money by Holzman & Company is obvious. That at times he was heavily in debt to Holzman & Company is equally obvious. It seems that at the time this stock was pledged to the bank his debt to Holzman & Company was in the neighborhood of $7,000.00 against which he had pledged $5,000 of C. N. & C. stock and on deposit under some arrangement this Carey stock.

No written contract of pledge is shown, nor any authority except that implied from the circumstances, is suggested. In fact the existence of the forged power of attorney negatives in the most conclusive way any other power, either express or implied for had there been one, there would have been no need of the power of attorney. But omitting any inference from the existence of the forged power, what would be the extent of the inference from the circumstances (not considering Mr. Fritz's testimony)? Simply that for the unpaid balance due Holzman & Company that company would have a claim against Fritz which it could by a proper proceeding make a charge against the stock in its possession, nothing more. The bank can stand in no better position than its assignor and is charged with all the conditions of the holding by Holzman & Company. Of course the trustee in bankruptcy takes the rights of Holzman & Company as well and has no better position.

It is apparent that the circumstances cannot be construed into a contract which would constitute the holding by Holzman & Company as a pledge with power of sale with or without notice or demand. But as a matter of fact the circumstances do not seem to the referee to contradict in any way Mr. Fritz's version of the contract, but to be

entirely consistent with it. It stands, therefore, uncontradicted and practically unvaried by the most searching cross-examination. It is not an unnatural condition, but one that is consistent with and explanatory of the entire chain of circumstances.

It is hard to believe that if this stock was held as a collateral under an authority to repledge or convert to the use of Holzman & Company, that it would have been necessary or possible for any one to pin to it a blank paper signed by a signature not genuine (a paper that could just as well have been pinned to anything else) when the genuine signature could just as well have been obtained. In any event, such questions of fact must be decided upon evidence and not upon suspicion or suggestions. There is no evidence that in any way overcomes that of the only party to the transaction before the referee. The absence of the other party is a misfortune that cannot be avoided, but that absence cannot argue against the testimony here present. Recurring to the claim of counsel for the bank it is found that the dealings of Fritz did not amount to an equitable pledging of the stock, that there was no implied authority to re-hypothecate this collateral and that no act of Fritz enabled Holzman and Company to hold themselves out as lawfully in possession of the stock as brokers, hence the contention that the Unity Banking and Saving Company had a right to rely upon such lawful possession of Holzman and Company falls to the ground.

See I Dos Passos 281, 283, 260 and 193.

It is apparent, therefore, that the bank is in no better position than Holzman and Company and is charged with the knowledge of the entire transaction.

It is apparent, too, that neither Holzman & Company nor the trustee have any claim against Mr. Fritz for this stock and in fact never did have as the proper steps to charge it were never taken at the time the balances were against Fritz. At the conclusion of the dealings Fritz was a creditor and not a debtor as the bankrupt had used his other stock (properly endorsed) in such a way as to estop Fritz from making a claim to it as against the pledgee. The value of this stock, credited to Fritz's account, makes the balance in his favor.

The referee, therefore, is of the opinion that Mr. Fritz is entitled to hold the Carey certificate free from any claim of the bank or of the trustee.

Charles T. Greve,
Referee in Bankruptcy.

Note. The referee attaches for convenience a brief mem-

orandum of citations relied upon by him, referred to by various counsel with his comment upon some of them.

1 Dos Passos, 193 (2d Ed.)

"It is said that as stocks are a fluctuating species of property, whose value is liable to be wiped out in a moment, the burden should not be put upon a broker to give his client notice of a decline or rise as the case may be, but to make demand for further margins. But this argument is just as forcible when applied to the undisputed case of a pure pledge where it is conceded that there must be notice to the pledgor before a sale can be made, as where the owner of stocks pledged them to secure borrowed money. In this instance although the stocks are liable to decline and leave the lender without security, it is clear that in the absence of express agreement they could not be sold without legal notice. So it has been held that where, instead of money the client deposits stock, etc., as margin the relation of pledgor and pledgee exists. The broker may always in the outset protect himself against the fluctuations of an advance or decline in the market by exacting sufficient margins to meet the contingencies of the speculator and if he neglects to do this he should not expect the law to aid him.

But finally the broker may always insure himself by making a special contract with his client which will enable him to dispose of securities in any manner at any time that may be agreed upon without notice and such contracts the law will approve and carry out.

Sec. Dos Passos 281.

The one to whom the broker has hypothecated his client's stock is a bona fide holder in two classes of cases, and as such entitled to have his claim against the broker paid before he delivers the stock to the client. There cases are as follows:

1. Where no hypothecation has been authorized by the client but the broker is apparently the owner of the stock and the pledgee has no notice that actually he is not such owner.

2. Where the power to hypothecate for the general purpose of the broker's business expressly and impliedly given.

Dos Passos 283.

"The client, in order to maintain an action for the recovery of the pledged property, is bound to show that no title passed to the pledgee."

Dos Passos 285.

An important question of the law of pure pledge is as to the time when the pledgor may be called upon to redeem.

When is the debt due? This depends upon the circumstances of the contract. By the pledge the title does not pass to the pledgee, but remains in the pledgor until directed by a sale upon notice or by judicial proceedings. * *

He (the pledgor) has his whole life time to redeem, provided the pledgee does not call upon him to do so.

Dos Passos 260.

Stock broker was not justified either in law or by custom of stock exchange in parting with the security during the pendency of the loan, but was bound to retain the identical stock pledged. * * *

"In the absence of express contract, the pawnee of property cannot sell it until the debt for which it is pledged becomes payable.

Barclay vs. Culver, 30 Hun. 1.

In this case the owner assigned (with power of attorney including the power of substitution) the stock to Culver. The court found that the very purpose of putting the stock in Culver's hands as shown by the receipt which gave Culver the option of securing the stock on its value, was to permit Culver to put the stock in circulation in the ordinary way. Under such conditions it naturally followed that the identity of the particular stock was of no consequence.

The case follows Horton vs. Morgan, 19 N. Y. 170. (Cited by Unity Bk.)

Here plaintiff instructed a broker to purchase stock. When plaintiff made demand for his stock the broker sent him the requisite number of shares (issued to a clerk with proper power of attorney). In the meantime the stock had become unsalable and plaintiff demanded return of his money.

The court expressly refused to give any judgment upon the right of broker to re-hypothecate stock, but holds that there was no evidence that defendant had disposed of the stock purchased for plaintiff.

The court further holds that broker has right for his own safety to take the title in his own or a clerk's name by reason of the advance of the balance of purchase money.

In Caswell vs. Putnam, 120 N. Y. 153.

Plaintiff ordered defendant brokers to buy 100 shares U. P. and paid thereon $1,000. Defendant bought stock in own name and finally upon order of plaintiff sold the stock. In the meantime an agent of plaintiff who had given the orders for him sold through the defendant brokers in name of plaintiff 100 shares of U. P., which sale was made at a better price than the sale of the stock actually bought or sold on plaintiff's order. Plaintiff claimed

right to adopt the better sale made through agent's unauthorized order.

The defendants claimed at all times to have on hands a sufficient amount of stock to respond to plaintiff's demand and this was held a proper defense as plaintiff did not purchase any particular shares of stock and defendant was not bound to have on hand for delivery any special shares as purchased for plaintiff.

In Mayo vs. Knowlton, 134 N. Y. 250.

A purchaser from a broker claiming that he had been defrauded by the latter who sold him his own stock upon an order to purchase, rescinded the contract and tendered back to the broker an equivalent number of shares of the same stock. Held that such a tender satisfied the requirements of a rescission as one share of stock is as good as another.

Douglas vs. Carpenter, 45 N. Y. Sup. 219.

Holds that a pledge of securities held by a broker for a customer which had been mingled with other securities of the broker and sold as their own was illegal and amounted to a conversion where the broker had not kept sufficient of the stock in his possession to meet the customer's contract. Here the stock was in broker's name obviously and the customer could have been estopped from claiming as against innocent third parties because of having given the indicia of title to the broker.

The case holds that a broker might lawfully have pledged the defendants (customers) securities by themselves separate and apart from others for an amount not exceeding the indebtedness to them by the defendant thereon. In such case the defendant would have been protected because he could have gone to the pledgees and have obtained the securities by payment or tender of the amount of his indebtedness and nothing more, but mingling them with other securities and pledging them for an amount larger than the defendant's indebtedness, would have placed them where the defendant could not have obtained them by a payment or tender of the amount of his indebtedness and would have been illegal and unauthorized. (McNeil vs. Bank, 46 N. Y. 325. Scheuler on Bailments, P. 201.)

The court quotes with approval Taussig vs. Hart, 58 N. Y. 425, which holds against a broker's right to sell a customer's stock without authority and speculate upon replacing it at a lower price.

"The customer does not rely upon the engagement of the broker to procure and furnish the shares when required, but upon his actually purchasing and holding the

number of shares ordered, subject only to the payment of the purchase money."

Berlin vs. Eddy, 33 Mo. 426.

Certain scrip was pledged as collateral with power of sale at any time at public auction or at the stock exchange the amount realized to be credited to owner. Broker mingled scrip with his own and upon default after notice sold an equivalent amount of scrip from the lot in his possession. Held, under circumstances stock indistinguishable. able.

Price vs. Gover, 40 Md. 103.

The memorandum contract expressly contemplated as sale of the stock. This stock had been previously purchased for Price by the broker and under the contract carried for him. No particular stock had ever been transferred or delivered or been demanded by him.

Worthington vs. Toomey, 34 Md. 182.

Stock purchased on margins and sold after notice and demand for greater margin. Held not necessary to keep any stock separate or designate it if at all times able to deliver.

Wood vs. Hayes, 81 Mass. 375.

A broker who has bought stock for another with money advanced by himself and holds it in his own name, may so long as he has not been paid or tendered the amount of his advances pledge it as security for his own debt to a third person, without making himself liable to an action by his employer.

Shaw. Trover does now lie. Contract upon condition which never allowed title to pass.

Hubbell vs. Drexel, 11 F. 115.

It is obvious that this stock was pledged with a proper power and assignment.

Chamberlain vs. Greenleaf, 4 West Va. 178.

Syl. "Where it was understood between a firm of brokers and its customers, for whom and, on whose order, it bought stocks on the security of a margin, that the firm might, according to the usual course of business pledge or hypothecate as security for loans to the firm, the stocks thus bought. Held that the mere pledge of such stocks would not of itself be a conversion."

Boylan vs. Hugnet, 8 Nev. 348.

A case of purchase of shares upon order. Held that no particular shares need be held, but broker must be ready to deliver an equal number of shares.

Skiff vs. Stoddard, 63 Conn. 198.

Is a very elaborate case discussing the relation of stock brokers to their clients in every phase of the question. At page 231 is presented the case of a customer whose stock

is pledged to secure margins as distinguished from stock purchased for the customer in the broker's name and held as security for the purchase price. "Pledgee, in the absence of authority express or implied, is not permitted to repledge as security for his own debt. Upon the facts appearing in the record, therefore B. & S.'s action in hypothecating Hooker's stocks must be regarded as wrongful."

Lawrence vs. Maxwell, 53 N. Y. 19, 22.

Allen, J. "Ordinarily, and in the absence of any agreement or assent by the pledgor, the pledgee would have no right to use the thing pledged, and a use of it would be illegal. But under special circumstances, depending somewhat upon the nature of the pledge, and in all cases, with the assent of the pledgor, express or implied, the property pledged may be used in any way consistent with the general ownership and the ultimate rights of the pledgee. (Story on Bailment, Sec. 89.)

There is nothing in the case of Sillcock vs. Gallandet, 21 N. Y. Sup. 552., to support any claim to the right to repledge stock deposited or received free from the equities of the original transaction. In fact the distinction is clearly made between stock purchased by the broker and those deposited on margins and parties' rights may have been attached by such an estoppel as resulted in the Kreb's case.

United States District Court, Southern District of Ohio, Western Division. In the matter of Holzman & Company, Bankrupts, Claim of Richard Fritz. Report of Referee. Filed Jan. 4, '07.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of
Holzman & Company,
Bankrupts. } In Bankruptcy. No. 3684.

Before Charles T. Greve, Referee in Bankruptcy, at Cincinnati, Ohio.

In re claim of Richard Fritz,
vs.
The Unity Banking & Saving Company.

Record Testimony & Exhibits.

Testimony—Mr. Rohrer.
Testimony—Mr. Stecher.
Testimony—Mr. Diehl.
Testimony—Mr. Hummel.
Testimony—Mr. Fritz.
Testimony—Mr. Stecher.
Testimony—Mr. Hummel.

Mr. Bohrer.

Testimony—Mr. Rothert.
Testimony—Mr. Cohrs.
Testimony—Mr. Logan.
Testimony—Mr. Wiseman.

United States District Court, Southern District of Ohio, Western Division.

In the Matter of Holzman & Company, Bankrupts.	In Bankruptcy. No. 3684.

Before Charles T. Greve, Referee in Bankruptcy, at Cincinnati, Ohio, December 7, 1905.

In re claim of Richard Fritz.

Present Mr. Theodore Horstman, attorney for Richard Fritz, Mr. Louis J. Dolle and Constant Southworth, representing The Unity Banking and Saving Company, Mr. Kramer and Mr. Heidingsfeld, representing the trustee, H. P. Boyden, the trustee and other witnesses.

Mr. Dolle, attorney for the Unity Banking and Savings Company, states that the certificate of the Philip Carey preferred stock is in his custody, subject to the order of this court. Mr. Horstman demands from Mr. Dolle the inspection of the certificates No. 10, 50 shares Philip Carey Preferred stock, issued in the name of Fritz, which is presented to him with the blank power of attorney thereto attached.

Mr. Bohrer, a witness, after being duly sworn by the referee testifies in answer to questions by Mr. Horstman as follows:

Q. Mr. Bohrer, please state your occupation and residence?

A. President of the German National Bank, residence Cincinnati.

Q. How many years have you been president of the German National Bank?

A. Nearly thirteen years, next January it will be about thirteen years.

Q. In the capacity of your connection with that bank, did you become familiar with the signature of Mr. Richard Fritz?

A. Only in a general way, by seeing his checks and notes signed by him.

Q. Has he done business with your bank?

A. He has.

Q. For how many years?

Mr. Bohrer.

A. A good many years, I can't recall the number, ten or fifteen years I should say.

Q. State to what extent you become familiar with his signature?

A. I stated before by seeing checks signed by him and notes signed by Mr. Fritz.

Q. Prior to being president, in what capacity were you connected with that bank?

A. I was cashier.

Q. For how many years?

A. 1881 to 1893.

Q. For how many years has Mr. Fritz done business with your bank?

A. I can't recall the time, ten or fifteen years.

Q. I hand you a certificate No. 10 for fifty shares of Philip Carey Manufacturing Company preferred stock issued to Fritz Brothers, dated July 2, 1902, with an assignment endorsed on the back, though not the printed blank form, purporting to sign over said shares on the 5th January, 1905, to Richard Fritz, the signature to such assignment being Fritz Brothers, per Otto Fritz. State whether you have seen that certificate before?

A. I have.

Q. I hand you now a blank power of attorney purporting to be signed the 13th of May, 1905, by Richard Fritz with the signature of I think it is Ross Holzman as witness to the signature of Richard Fritz, this being the power of attorney which was submitted by Louis J. Dolle for the Unity Banking and Savings Company attached to the certificate which I has just called your attention to. State whether you have seen it?

A. I have.

Q. When did you see it before?

A. I have seen these two pages some time prior or after the assignment of Holzman. I can't recall the date, the last two or three months I think.

Q. Are you sure whether it was prior or since the assignment?

A. I can't recall the date.

Q. Would the circumstances under which you saw it enable you to recall it?

A. It must have been since the assignment?

Q. State who presented it to you at that time?

A. My recollection is it was presented by Mr. Hartlieb of the firm of Irwin, Ballman.

Q. He is a member of the firm of Irwin Ballman and Company brokers of this city?

Mr. Bohrer.

A. Yes, sir.

Q. For what proposition was it presented to you?

Objection by Mr. Dolle.

Mr. Horstman wants to show the circumstances under which it was presented and under which he passed upon the signature.

Q. State whether it was presented to you for the purpose of sale?

Objection by Mr. Dolle.

I want to show the circumstances in order to show the judgment that Mr. Bohrer passed upon this signature, prior to his having any knowledge on the subsequent development or claims of Mr. Fritz, so that he passed a certain judgment upon this signature prior to his knowing that Mr. Fritz disputed the signature.

Objection by Mr. Dolle.

Reserved an exception and stated what he offered to prove. The objection being sustained, Mr. Horstman notes an exception and stated he attempted to show the circumstances under which the property was presented to Bohrer for the purpose of showing his judgment on the matter, before he had any knowledge that it was disputed by Mr. Fritz.

Q. In your profession of banker, have you become expert in respect to signatures?

Objection by Mr. Dolle.

Q. State whether or not this signature to the blank power of attorney purporting to be the signature of Richard Friz, is in your opinion, the signature of Richard Fritz.

Objection by Mr. Dolle.

Cross examination by Mr. Dolle:

Q. Did you ever see Fritz sign his name to any note or check personally?

A. I have.

Q. Can you tell us when and where you actually saw him sign his name?

A. My recollection is I have seen him sign some promissory notes in my presence?

Q. About when?

A. I can't recall.

Q. Where?

A. At the office of the German National Bank.

Q. For what amounts were the notes that he signed?

A. I don't remember now, I can look at my records and find out.

Q. I am not asking as to what your records show.

Mr. Bohrer.

Can you recall of ever having seen Mr. Fritz sign his name to any note, check or any other instrument whatsoever?

A. In the course of business he has appeared on several occasions and made out papers. My recollection is that I have already filled out notes and had him sign them in my presence, but the dates and time I don't recall.

Q. Did you ever fill out a check for Fritz to sign?

A. Not a check, a note.

Q. Any instrument other than a note for him to sign?

A. No, sir.

Q. Have you any recollection as to when or how many notes you filled out for Fritz to personally sign?

A. I can't recall the dates, I don't remember.

Q. Mr. Bohrer, disregarding any intent to give offense, can you in your mind say positive that you ever saw Fritz sign his name?

A. I think I have recollection of him doing so.

Q. You have no defined idea?

A. Not any particular instrument or date. I might refresh my memory by looking up the records.

Q. That would not show that it was signed in your presence?

A. No, sir. I can't prove that positive except by having the proper dates.

Q. Can you recall ever any occasion for his making application to your bank for the loan of money which would necessitate his signing any notes in your presence?

A. I think he has appeared before me on several occasions and asked for accommodations and they were granted immediately, and the notes filled out and signed in my presence.

Q. Were they filled out when presented to you?

A. I believe there were occasions where the notes were made out by myself, that I filled out the notes myself.

Q. You wouldn't positively state under these circumstances that you ever saw Mr. Fritz sign his note or any paper, or write his signature to any paper?

A. Yes, sir.

Q. When and where?

A. Just recently.

Q. When?

A. Within the last three or four weeks.

Q. Was he there any time on more than one occasion?

A. That is fresh in my memory.

Q. Any occasion prior to the failure of Holzman &

Company, that you saw a note to which he attached his name, to which you will say positively you did see him sign it?

A. I can't recall the time. That is my memory and in the course of our dealings on several occasions he has been down there. I filled out the note and he signed it.

Q. That is your recollection?

A. Yes, sir.

Objection to qualification overruled, exception noted.

Objection of Mr. Dolle to question asked by Horstman overruled and exception noted by Dolle.

Examination, by Mr. Hortsman.

A. I, in my opinion do not regard this as the signature of Richard Fritz.

Q. State whether or not you formed and expressed the same opinion about that signature, shortly after the bankruptcy proceedings against Holzman and Company were commenced and before you had heard of any claim to that effect made by Mr. Richard Fritz?

Objection by Mr. Dolle.

Objection sustained and exception noted.

By Mr. Horstman: We expect to prove that the witness by his answer to this question, that shortly after the bankruptcy proceedings against Holzman and Company and before he had any knowledge from any source whatsoever, that there was any question about the regularity of this power of attorney and genuineness of the signature when the same was presented to him for purposes of sale, he rejected the certificate and power of attorney, on the ground that he did not believe that to be Richard Fritz' genuine signature.

Cross-examination, by Mr. Dolle:

Q. Of your own knowledge, Mr. Bohrer, do you know whether Richard Fritz individually kept an account in the German National Bank?

A. He did.

Q. And also as a member of the firm of Fritz Brothers?

A. Fritz Brothers kept an account.

Q. Who would sign the checks which were made against funds on deposit at the bank?

A. I think either member of the firm signed them.

Q. Who were the members of the firm?

A. Richard and Otto.

Q. Was there any other partner authorized to subscribe the name?

A. Not to my recollection. That question is left with our tellers. By the signature card. They kept a record of that.

Mr. Stecker.

Q. No officer or president of the bank investigates the signature of any depositor, or any signature?

A. No, sir.

Q. As such president, you were never called upon to pass upon the signature of Richard Fritz?

A. No, sir.

Q. Or of Fritz Brothers?

A. No, sir.

Q. Have you given the signature which you passed judgment upon, any consideration other than that which you have seen during this hearing?

A. You mean this special signature?

Q. Had you given any consideration to ascertain whether in your opinion it was or was not the signature of Mr. Richard Fritz?

A. I have seen that before and compared it with the signature of Richard Fritz.

Q. I mean now this time it was just shown to you, and you say it was not his signature, is your judgment predicated upon the view which you had of this instrument, which was exhibited to you during our presence here.

A. As I am familiar with his regular signature, I consider it doesn't or there is no familiarity with that signature and his signature in my opinion.

Q. Can you or do you feel yourself competent to select the signature of Mr. Fritz from a number which might be presented to you?

A. I don't set myself up as an expert in signatures. I am not the teller of our bank, but as far as I have seen his signature, I can express a judgment.

Q. You don't consider yourself an expert on signatures?

A. No, sir.

Mr. Dolle moved to strike out all the testimony of Mr. Bohrer. Motion overruled and exception noted by the bank.

Mr. Stecher, the next witness, after being duly sworn, testifies in answer to questions by Mr. Horstman as follows:

Q. Mr. Stecher, were you formerly employed by the German National Bank?

A. Yes, sir.

Q. What is your full name?

A. Gustave Stecher.

Q. In what capacities were you employed?

A. You mean from the beginning or towards the last? Different capacities.

Mr. Stecker.

Q. Towards the last?

A. As paying teller of the bank.

Q. During what years were you paying teller?

A. About ten years, up to March, 1905.

Q. During that time were Fritz Brothers, of which firm Richard Fritz was a member and Richard Fritz, depositors at that bank?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. In your capacity of teller, state whether you paid checks signed by Richard Fritz for the firm, and individually?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. In your capacity of teller, state whether you paid checks signed by Richard Fritz for the firm, and individually?

A. Yes, sir.

Q. To what extent?

A. I passed upon all the signatures of the customers.

Q. Were they numerous or otherwise?

A. Yes, sir. Quite a number of firm checks and quite a number of individual checks, also.

Q. Was Richard Fritz comparatively a large depositor?

A. Yes, sir. He has quite a nice account for an individual account.

Q. Was the firm a large depositor?

A. Yes, sir.

Q. Were the firm checks sometimes signed by Richard Fritz?

A. They were.

Q. Did you then become familiar with Richard Fritz' signature?

A. Yes, sir.

Mr. Stecher, I hand you a power of attorney to which we referred before attached to this Philip Carey Manufacturing Company, certificate No. 10, purporting to be signed by Richard Fritz. Examine into that signature and state whether in your opinion that is the genuine signature of Richard Fritz?

Objection by Mr. Dolle.

Cross-examination, by Mr. Dolle.

Q. Did you ever see Mr. Richard Fritz personally sign his name to any instrument whatever?

A. I can't recall it.

Mr. Stecker.

Q. You don't recall?

A. I don't think I saw him sign it. He came with the signature already signed.

Mr. Horstman will prove later by the testimony of Mr. Fritz that he did personally sign those checks that he presented.

Objection overruled and exception noted by counsel for the Unity Banking and Savings Company.

A. As far as I am familiar with it, I wouldn't accept it as his signature.

Mr. Dolle asked to have the answer stricken from the record as not responsive.

A. In my opinion not.

Examination, by Mr. Horstman.

Q. Are you able to state whether this check I hand you, Cincinnati, July 21, 1904, German National Bank, paid to John W. Ballman, $100.00, signed R. Fritz, endorsed John W. Ballman, together with the stamp of the clearing house and paid to the Fifth National Bank, whether that passed through the bank?

A. It certainly did.

Q. State whether that is the genuine signature of Richard Fritz?

Objection by Mr. Dolle.

Offered to compare his genuine signature to that purporting to be his signature.

Objection sustained, exception noted by Horstman. Offered to prove that the signature of the maker to that check is the genuine signature of Richard Fritz.

Cross-examination, by Mr. Dolle:

Q. Mr. Stecher, are you capable of selecting from a number of signatures, that which you believe the genuine signature of Mr. Fritz?

A. I might make an attempt. Don't know whether I would be successful.

Q. Is your knowledge of his signature as will admit of your making a selection of that signature which is genuine and that which is not?

A. I expect to know his signature. I might make a mistake in selecting.

Q. You wouldn't say that it is not his signature?

A. I would say no, from the knowledge of his signature.

Q. You won't say that is not his signature?

A. I wouldn't accept it as his signature.

Q. And yet you have never seen him write his name?

A. Not to my knowledge.

Mr. Stecker.

Q. And you have no knowledge who signed the checks which you honored down there?

A. No knowledge of them? I was familiar with the signature.

Q. The firm was doing business with the bank which was the accepted signature of the firm and Richard Fritz, but of your own knowledge, you don't know who signed those checks?

A. Compared with the signature they had there.

Q. Of your own knowledge, do you know who signed those checks?

A. I can only believe they signed them. I certainly don't know positive.

Q. What is it that prompts you to say that the signature on that power is not the signature of Richard Fritz?

A. That doesn't correspond with that in my mind as his signature?

Q. Isn't it a common practice among banks and business men having large accounts, to permit other persons to sign their checks.

A. This was no corporation, it was a firm.

Q. Isn't it a common practice for those who have accounts with banks and with the bank of which you were paying teller, to permit others than those in whose name the deposit was kept, to sign the checks for them?

Objection my Mr. Horstman. Objection overruled.

A. I won't say it is not a common practice.

Q. Is it done?

A. In instances, yes, sir.

Q. Isn't it true that in cases of firms, there were more than one person sign?

A. In firms, usually the members of the firm do the signing.

Q. And corporations?

A. Corporations it is different, the officers sign.

Q. In individual accounts the checks are signed and countersigned by others?

A. Not usually as an individual.

Q. You mean it is not the prevailing case?

A. No, sir; it is done.

Q. So that whether Mr. Fritz actually signed the checks you honored, or whether some one signed the name to it, you would have no knowledge of that fact, other than they were not returned to you after the account had been balanced with any objection?

A. Yes, sir.

Q. That is the limit of your knowledge?

Mr. Diehl.

A. Yes, sir.

Mr. Dolle moves to strike out the Stecher testimony.

Motion overruled and exception noted by counsel for the Unity Banking and Savings Company.

Mr. Diehl, the next witness, after being duly sworn, testifies in answer to questions by Mr. Horstman as follows:

Q. State your full name?

A. Nicholas Diehl.

Q. Where do you reside?

A. 1813 Race.

Q. Are you connected with the Unity Banking and Savings Company?

A. Yes, sir.

Q. In what capacity?

A. Treasurer.

Q. How long have you been treasurer?

A. About three years.

Q. You were subpoenaed to produce books and papers of that bank, containing references to indebtedness of Holzman and Company to the bank and as to the collateral the bank held to secure that indebtedness. Will you produce such books?

A. I think the book will be here in a few minutes. We sent for it.

Q. Mr. Diehl, who conducted the negotiations between your bank and Holzman and Company?

A. Generally the secretary and treasurer.

Q. Who was the secretary?

A. Mr. Hummel is secretary and I am treasurer.

Q. How long have you been treasurer?

A. About three years?

Q. What position had Mr. Charles F. Goettheim with the bank?

A. He was on the executive committee and secretary.

Q. During what time was he secretary?

A. I think about a little over a year, a year and a half, something like that.

Q. Mr. Charles F. Goettheim was secretary during the time the negotiations here were made with Holzman and Company?

Objection by Mr. Dolle.

Q. During the time the negotiations were had creating the indebtedness that existed at the time of the failure of Holzman and Company?

Objection by Mr. Dolle.

Mr. Diehl.

Q. Couldn't you fix the month and year when Mr. Goettheim was appointed secretary?

A. I could not.

Q. Fix some time?

A. He became secretary in September, 1904. Subject to verification.

Q. As such secretary, did Mr. Goettheim with you as treasurer, conduct the negotiations since September, 1904, between Holzman and Company and your bank?

A. Yes, sir; he did the most of the time, but once in a while he wasn't there.

Q. How much of the time was he not there?

Objection by Mr. Dolle.

A. The most of the time.

Q. Can't you state what time he was absent?

A. Yes, sir; he was absent around May. He was sick the forepart of May. He was sick for several weeks.

Q. How many weeks?

A. Three or four weeks he was sick.

Q. During the time that he was sick, did any other officer of the bank take his place, or did you alone conduct the business?

A. The assistant secretary took his place, Mr. Hummell.

Q. Was Mr. Goettheim still sick at the time of the failure of Holzman and Company?

A. I think he was.

Q. You said he was sick three or four weeks. Could you say how long after the failure his sickness continued?

A. I couldn't tell you that.

Q. What connection had Mr. Charles F. Goettheim with Holzman and Company, if you know?

A. I don't know anything about it. I know he was around there, but I didn't know what he done there.

Q. Did you know he was employed in some capacity?

A. I know he was there, but I couldn't tell what department. I never asked him.

Q. Have you a list of the indebtedness and collateral to secure the same, that your bank held from Holzman and Company at the time of the failure?

A. I think we have.

Q. With which member or members of the firm of Holzman and Company, or prior to the organization of that firm, with the firm of Feder, Holzman and Company, did you and your secretary deal in those negotiations?

A. Ross Holzman.

Q. Was it altogether Ross Holzman?

A. After he took possession we dealt with him.

Mr. Diehl.

Q. Prior to the time, you remember the time when Feder retired from the firm of Feder, Holzman and Company?

A. I think it was about April, 1905.

Q. Prior to the time when Feder retired, from that time in April, 1905, with which member of the firm did your bank deal?

A. Ross Holzman.

Q. Then it was always Ross Holzman?

A. Yes, sir.

Q. I hand you a statement, a typewritten statement, purporting to be a statement of Holzman collateral, held by the Unity Banking and Savings Company, which was just handed me by Louis J. Dolle, attorney for your bank. Please examine it and state if that is a correct statement of the collateral of the indebtedness and collateral to cover the same, between your bank and Holzman and Company at the time of the failure of Holzman and Company?

A. I guess it is a statement as near as I can come to it.

Q. How many notes of Holzman and Company or Feder, Holzman and Company, did your bank hold at the time of the failure?

A. I couldn't tell you how many notes we held.

Q. Have you the books and papers here that will enable you to state what the loans to Holzman and Company in existence at the time of the failure were and what collateral you held to secure such loan or loans?

A. I have the books here.

Q. A loan of $10,000.00 of March 21, 1905, is that a firm or individual note?

A. Firm note, Holzman and Company.

Q. What collateral does your book show was pledged for that note?

A. $4,500.00 Bellevue Ohio Water Works 5 per cent bond. One Norwood Ohio 5 per cent school bond $500.00. Cleveland Heights Ohio $500.00 bond. One Gibson County Indiana $500.00 bond. Five Railway Indiana bonds $1,000.00 each $5,000.00. There was one C. L. & A. Railway bond 5 per cent, $1,000.00. Two Bellevue Ohio school 4 per cent bonds $500.00 each. Fifty shares Philip Carey Preferred stock $5,000.00. Two Henry County 4 1-2 per cent bonds, $1,000.00, $500.00 each. Four C. C. & L. Railway 4 1-2 per cent bonds, $4,000.00.

Q. The question was what notes of Holzman and Company the bank held, and what collateral to secure each note or notes, and you gave us a list, now so far as I have it

Mr. Hummell.

down to four C. C. & L. each $1,000.00 for $4,000.00. Was there any other collateral to cover that note?

A. That was all the collateral given on that note.

Q. Had any of that collateral given on that note been surrendered back, prior to the failure?

A. Yes, sir.

Q. If so, which?

A. $4,500.00 Bellevue, Ohio Water Works bonds. They were surrendered. Two Bellevue, Ohio 4 per cent $500.00 bonds, altogether $1,000.00, were surrendered back.

Q. What were surrendered back?

A. Two $500.00 substituted in the place of that $4,500.00, these were substituted. This $4,500.00 Bellevue taken out on May 11, and there was substituted for that $1,000.00 Bellevue Ohio 4 per cent school bond, that was substituted for the $1,000.00 Bellevue Ohio Water Works bond taken out May 11th, then on May 15th the other $3500.00.

Q. I would suggest that you commence over again so we don't get into confusion and give us each bond that was surrendered, and as it was surrendered give us each bond or other collateral that was substituted, with the date.

Q. Whenever you substituted, did you have any note or written request to substitute one for another?

A. How do you mean?

Q. Did you have a letter requesting the delivery of some stock?

A. Generally a letter given.

Mr. Diehl withdrawn and Mr. Hummel sworn.

Mr. Hummell after being duly sworn, testifies in answer to questions by Mr. Horstman as follows:

Q. What is your full name?

A. Robert Hummell.

Q. What is your business?

A. Assistant Secretary Unity Banking and Savings Society.

Q. Mr. Hummell, have you the book or books of the Unity Banking and Savings Company that contain a record of the indebtedness of Holzman and Company to your bank, the collateral held by your bank to secure that indebtedness at the time of the failure of Holzman and Company?

A. Yes, sir: "Note of March 21, 1905, $10,000.00 and list of collateral as given."

Q. Mr. Hummell, you have given us the item concern-

Mr. Hummell.

ing note of March 21, 1905, for $10,000.00 together with the list of collateral held to secure that note. Was all of that collateral originally given to secure that note when it was originally executed?

A. No, sir.

Q. Which of that collateral originally was given to secure the note?

A. It was $4,500.00 Bellevue, Ohio, 5 per cent bond, Water Works. One Norwood Ohio 5 per cent school bonds, $500.00. One Cleveland Heights Ohio $500.00 bond. One Gibson County Indiana $500.00 bond. Five Columbia Railway $5,000.00. That was all.

Q. State whether any of that collateral was surrendered and other collateral substituted, and if so, when the surrender and when the substitution was made?

A. On May 11, 1905, there was withdrawn $1,000.00 Bellevue, Ohio 5 per cent Water Works bonds. There was substituted $1,000.00 Bellevue Ohio, school 4 per cent bonds. May 15th there was withdrawn balance of Bellevue, Ohio Water Works bond $3,500.00 and there was substituted Cleveland Heights $500.00 bond. There was substituted May 15th, 50 shares of Philip Carey Preferred stock. On May 19th, there was withdrawn $5,000 Columbia Railway bonds. There was submitted $4,000 C. C. & L. Railway bonds. March 25th, there was withdrawn $500 Gibson County bond, withdrawn $500 Norwood bond, Substituted $1,000 C. L. & A. bond. The rest of it has been sold since.

Q. Have you now substituted all the withdrawals and substitutions of collateral on that note?

A. I believe, to the best of my knowledge and belief.

Q. At the time of the failure, what collateral did you hold?

A. There was fifty shares Philip Carey. $4,000 C. C. & L. and the C. L. & A. ?

Q. Have any of these collateral been sold since the failure, and if so, how much?

A. The $4,000 C. C. & L. Railway bonds were sold for $4,040.88, and the C. L. & A. was $999.34 since the failure.

Q. What other note of Holzman and Company, if any, and collateral did you hold?

A. April 1st made a loan to Holzman and Company for $8,700.00.

Q. Give the collateral originally on that and then what was surrendered and substituted if any.

A. There was ten shares of Philip Carey Preferred stock. One Covington, Kentucky, Water Works bond.

Mr. Hummell.

Fifty-one shares of Brighton German Bank stock. Seven shares of C. N. & C. common $50.00. July 18. Ten shares of Philip Carey stock was sold.

Q. Was any of that surrendered back and substitution made before the failure?

A. No surrender or no substitution.

Q. What, if any, of that collateral has been sold for how much?

A. July 18, ten Carey $1,090.00. July 31, 1905. Covington sold for $108.01. Fifty-one shares of Brighton German, September 22d was sold for $10,282.87. September 30, 1905. Seventy C. N. & C. sold for $266.00. On April 1st made a loan of $12,500.00. Holzman gave as collateral. Oelwein Extension Syndicate certificate for $500.00, on which there was paid $15,000.00.

Q. Was that surrendered or any substitution made before the failure?

A. No, sir.

Q. Has that been sold since?

A. No, sir.

Q. Give us any other note.

A. April 1st made to Holzman and Company $1,500.00, collateral given was one Henry County 4 1-2 per cent bond $500.00 and $1,000.00 Bellevue Ohio school 4 per cent bond. $1,000.00 Bellevue, Ohio was substituted, was given as a substitute. Withdrawn on May 17, 1905, Bellevue, Ohio 4 per cent bond. Substituted for it San Antonio, Texas, 4 1-2 per cent bond, $1,000.00, May 17th.

Q. Has that collateral been sold?

A. Yes, sir.

Q. For what prices?

A. September 22d, Henry County $500.00 bond was sold for $505.05. October 7th, San Antonio bond sold for $1,029.75. April 1st, loan made to Holzman and Company $10,000.00.

Q. Give us the collateral originally pledged.

A. Three C. L. & A. 5 per cent bonds, $3,000.00. Forty C. N. & C. Preferred $100.00 shares. Two shares Cincinnati Street, $50.00 shares. $1,000.00 Beaumont, Texas, 6 per cent bond. Sixty shares C. N. & C. Common. $200.00 U. S. Government 3 per cent. Twenty-five shares Merrill Chemical stock. $1,000.00 Bellevue, Ohio, Water Works. $500.00 Norwood school.

Q. Was any surrender and some substitution made?

A. Yes, sir. Withdrawn April 12th, fifty shares C. N. & C. Withdrawn and substituted $500.00 Bellevue, Ohio school $100.00 Covington, Kentucky. $200.00 Government

bonds. Fifty National Biscuit Common, $100.00 shares, in place of sixty C. N. & C's. On May 17th there was withdrawn $1,000.00 Bellevue, Ohio. Water Works 4 per cent bond. $500.00 Bellevue, Ohio, 4 per cent school bond withdrawn. Substituted one San Antonio $1,000.00 bond $500.00 Newport, Kentucky bond.

Q. Which of those collateral did you sell and how much?

A. July 10th, $200.00 4 per cent Government bonds sold for $210.00. July 14th, 5 shares National Biscuit common $305.62. July 31, there was $500 Norwood, Ohio school bonds sold for $532.55. $100.00 Covington, Kentucky bond sold for $105.95. On August 4th, 2 shares Cincinnati Street sold for $146.87. August 25th, $100.00 Covington 3 per cent sold for $104.50. September 22d, $100.00 3 per cent Government bond sold for $104. Newport, Kentucky $500 bond sold for $525.61. September 30th, 4 shares C. N. & C. sold for $380.00. October 7th, $2,000.00 C. L. & A. sold for $2,979.99. November 10th was placed to the credit of this loan $30.00 on coupon that was due on the Beaumont, Texas $1,000.00 bond.

Q. Do you still hold some of that collateral given with that note?

A. Yes, sir. Beaumont, Texas, we still hold 25 shares Merrill Chemical stock. That is all we hold.

Meeting adjourned until ten o'clock, December 8, 1905.

December 8, 1905, 10:00 A. M.

Mr. Otto Fritz being called, after being duly sworn by the referee, testifies in answer to questions by Mr. Hortzman as follows:

Q. Mr. Fritz, you are the brother of Richard Fritz?

A. Yes, sir.

Q. How long have you benn associated in business with Richard?

A. About thirty-two years.

Q. Are you familiar with your brother Richard's signature?

A. I am.

Q. You have seen his writing?

A. I did many times, yes, sir.

Q. I call your attention to this certificate No. 10 for fifty shares Philip Carey Manufacturing Preferred, and ask you in whose writing the written portion in the back of that certificate is made?

A. My writing.

Mr. Otto Fritz.

Q. Are the words written in the body in your hand writing?

A. Yes, sir.

Q. Who is the witness?

A. Who is the witness? Our secretary.

Q. I now hand you the power of attorney which was attached to that certificate, dated May 13, 1905, purporting to be signed by Richard Fritz and witnessed by Ross Holzman, and ask you whether in your opinion that is the signature of your brother Richard Fritz?

Objection by Mr. Dolle.

Cross-examination, by Mr. Dolle:

Q. Mr. Fritz, your brother is associated with you in business?

A. He was and is still. He is a stockholder. Our concern is a stock company.

Q. You have seen you brother sign his name?

A. Why certainly, often.

Q. Have you ever had any occasion to make any comparison between his different signatures?

A. No, sir.

Q. Does he sign it the same on every occasion?

A. I guess, about as near as that can be done.

Q. Practically so?

A. Yes, sir.

Q. You have never seen it varied in any respect?

A. Somewhat. A signature can be made a little different, but it is always similar. I write my signature sometimes a little different, but I can see at a glance the similarity.

Q. You mean the identity of handwriting?

A. Yes, sir.

Q. You know of any occasion where he had any reason for change?

A. No, sir.

Q. As to whether under different conditions it was written in the one or the other style?

A. No, sir.

Q. That has never come to your observation?

A. No, sir.

Q. It is always similar?

A. Yes, sir.

Q. Are you familiar enough with his signature, if a number were shown you, to say which was his signature and that which might not be his signature?

A. I don't know whether I could or not.

Q. If some signatures were shown you which were

genuine and others which were not, could you take one which was his signature?

A. There may be a similarity. I wouldn't dare specify the one which is genuine.

Q. You wouldn't be able to tell which is the genuine?

A. I wouldn't undertake it.

Q. You are posing as an expert on handwriting?

A. No, sir; not exactly.

Q. And if there were a number of signatures shown you supposed to be that of Richard Fritz, you wouldn't under oath say that one was or the other wasn't your brother's signature?

A. I hardly think so, because I may be able and may not be.

Q. Under oath you wouldn't say you possessed that knowledge of his signature?

A. I wouldn't take that responsibility.

Objection by counsel for the bank to qualification of the witness.

Objection overruled and execution noted.

Examination by Mr. Horstman:

Q. Let me ask first, who signed the checks of your company?

A. They were signed by myself and Richard, both. Who happened to be there at the time.

Q. To get an idea, to what extent were checks issued by your company?

A. Per annum you mean, during the year?

Q. During the week.

A. Probably $20,000.00 or $30,000.00, sometimes more and sometimes less.

Q. Yours is a large cigar manufacturing business employing hundreds of men, is it not?

A. About four hundred people.

Q. You had occasion to see his signature frequently?

A. Yes, sir.

Q. State whether or not the signature to that power of attorney is the signature or not of Richard Fritz.

Objection by counsel for the bank. Objection overruled and exception noted.

A. In my judgment this is not his signature.

Cross-examination, by Mr. Dolle:

Q. You have seen your brother sign his name very frequently?

A. Not very frequently. The occasion didn't require that. It may have been once a week, once a day, once in

six months, but I have seen his signature for the past thirty years.

Q. I am showing you a little paper enclosed in an envelope, bearing the name of Richard Fritz. Can you state whether that is his signature, or not?

A. I wouldn't swear to it, but it looks more like it than the other one.

From the knowledge which you possess of the writing of your brother, would you say that is his signature?

A. I wouldn't swear to it. I would say accordingly to my judgment this is not his signature in the power of attorney. I wouldn't swear to any signature positively, because they are similar.

Q. I am showing you a slip of paper bearing the signature of R. Fritz. What do you say as to that?

A. They look alike.

Q. Would you say that is his signature?

A. They all look alike. They both look different than the one on there.

Q. You mean the one on the power of attorney appears to be different from that which I first showed you and which we offer as exhibits and will mark No. 1 and No. 2, I am now handing you the three signatures marked one and two and the power of attorney. Will you tell or indicate wherein they are any different one from another?

A. There is a decided difference in the "z" to start with. There is a decided difference in the "f".

Q. The "f" in the power of attorney to your notion is different from that which you have seen him sign in writing letters?

A. Yes, sir.

Q. Is that the only difference?

A. There is a difference all the way through, as far as that is concerned. There is a difference in the "r".

Q. In other respects?

A. They don't look similar to me at all, that is the whole thing in a nutshell. Not to my notion.

Q. Is there any similarity between the one marked No. 2?

A. They don't look similar to me, that is sufficient.

Q. Each of them happen to be different from the other two? Exhibit No. 1 and No. 2, what do you say about them?

A. Exhibit 2 is a pencil signature.

Q. Is that his signature?

A. It may be. To my notion, the Fritz is a hurried

signature, and I wouldn't give an opinion on it.

Q. From your knowledge, would you say that is or is not his signature, marked Ex. 2?

A. No. 1 and No. 2 look similar.

Q. You wouldn't positively swear that the signature on the power of attorney is that of Richard Fritz?

A. To the best of my knowledge, that is not his signature.

Q. From the knowledge which you have from your brother's signature his name to documents, would you say that is positively or not his signature?

A. I don't believe it is.

Q. As to the Ex. No. 2, what do you say?

A. That is too hurried for me to pass judgment upon.

Q. As to the Ex. 1, what do you say?

A. That looks similar to his signature. It looks more like it to me than the power of attorney.

Mr. Stecher being recalled and having resumed the stand testifies as follows in answers to questions by Mr. Horstman:

Q. Mr. Stecher, do you recall having on any occasion been present when Mr. Richard Fritz signed his name to any check?

A. I recall since yesterday in presenting a check, I would request him to endorse the check and he would step away from my desk to the little desk about four or five feet and there endorse the check and present it to me then. In that way I saw him endorse the check.

Cross examination by Mr. Dolle:

Q. As a fact, you didn't see him write it?

A. I looked at him.

Q. That is the only occasion?

A. Might have been more, but my attention has been drawn to the one occasion.

Q. When was this?

A. I believe if I had his check I could tell the date.

Q. If you had the check, could you select the one?

A. I could say if the check passed my desk and whether it was cashed.

Q. Could you select from the bundle of return checks the one he signed on that particular occasion?

A. No, sir, I couldn't do that.

Q. When did you see him sign?

A. I couldn't recall unless I saw the check.

Q. How many years ago?

Mr. Hummell.

A. Within the last year. It occurred probably several times, I can't recall the date exactly.

Q. Isn't it a fact that, like any paying teller, you returned it to be endorsed and it was presented and you honored it and that was all. You had no time to stand by and see parties sign checks?

A. I didn't have anything else to see, but see him go there.

Overruled for further consideration.

Q. You paid other people too?

A. Might have been several occasions that I paid between that.

Mr. Hummell again recalled testifies in answer to questions by Mr. Horstman as follows:

Q. Mr. Hummell, yesterday you testified that on the note of March 21, 1905, for $10,000.00 on May 15th there was substituted for other collateral withdrawn, fifty shares of Philip Carey Preferred stock, being the stock in question in this case state whether your books show that the Unity Bank held that certificate as collateral at any prior time?

A. No, sir.

Q. Did the Unity Bank hold that certificate as collateral on any loan whatsoever, prior to that date, are you able to state?

A. We received that collateral on May 15th.

Q. Are you able to state from the books in your hands, now, whether the bank held that same stock as collateral on any other occasion before that time?

A. Before this time?

Q. Yes, do your books show that?

A. I can't catch what you mean?

Q. I want to know whether your bank had this collateral to cover some other loan before it received it on May 15th?

A. Cover all the loans?

Q. Your bank, according to what you read, received this certificate for fifty shares of Philip Carey Preferred on May 15th, now do you know either of your personal knowledge, or from the books, whether your bank had held this certificate of stock at any other time prior to May 15th for any purpose?

A. No, sir, they did not.

Q. Are you positive?

A. Yes, sir.

Mr. Hummell.

Q. Would your position in the bank enable you to know that positively?

A. I know that from my books.

Q. You prepared this statement in the indebtedness with the interest?

A. Yes, sir.

Mr. Horstman offers the statement which is marked Exhibit No. 3. It is received as Mr. Hummell's testimony.

Q. Did you have any conversation with Ross Holzman or any other member of the firm of Holzman and Company, or Feder, Holzman and Company, with reference to these loans and collateral?

Objection by Mr. Kramer. Objection withdrawn.

A. No, sir.

Q. Do you know of your own personal knowledge, whether your bank had any agreement with Holzman and Company, as to whether or not these collateral should be held security for the respective loans as enumerated by you yesterday, or whether the collateral should be available as security for all the loans?

Objection by Mr. Kramer.

A. No, sir.

Q. During Mr. Goettheim's illness, did you take his place?

A. Yes, sir.

Q. During what time was he ill and absent from the bank?

A. Around the 15th of May.

Q. That was the commencement of it?

A. It was around there. He was ill for about two weeks. I can't say, it commenced at that time, might have been a few days before. He was sick after, but I couldn't say how much before that.

Q. You know the date of the failure?

A. I recall the time, but I can't say the date.

Q. The failure was on the 25th. He was sick then for about ten days or two weeks before the failure of Holzman and Company and for some short time afterwards?

A. Yes, sir.

Q. During that interval you acted in his place, you being Assistant Secretary?

A. Yes, sir.

Q. During the time you acted as substitute for Mr. Goettheim, did any matter come before you in connec-

tion with the Carey Company collateral in question here?

A. I went down the afternoon it was given to Diehl, and examined the power of attorney.

Q. The one that has been shown here?

A. Yes, sir.

Q. Were you present at the conversation between Holzman and Diehl?

A. No, sir.

Q. Did you participate in that transaction other than to see the certificate and power of attorney?

A. That is all.

Q. What occurred between them you know nothing of.

A. Nothing no,sir.

Q. Was any written statement or agreement with reference to that given to the bank?

A. Except the letter stating what the substitution was.

Q. Has your bank any letter or statement from Holzman and Company with reference to which collateral shall be applicable to the respective loans, or whether it shall all be applicable?

A. I don't know, I can't say.

Q. Not that you know of?

A. No, sir.

Q. Have you heard of any such being in existence?

A. No, sir, I can't say. From our officers I have heard it stated.

Q. Not in writing?

A. No, sir.

Mr. Kramer moves to rule out "that he heard it verbally in his office." Answer may be stricken out.

Exception noted by Mr. Horstman.

Q. State which officers of your company said they had a verbal agreement, concerning which, collateral would be applicable to the respective loan?

Objection by Mr. Kramer. Objection sustained and exception noted by Mr. Horstman.

Q. State whether or not on any occasion that you were at Holzman and Company, any member of the firm of Holzman and Company said to you, or Diehl, or any person connected with your bank, Goettheim or anybody else, or whether Goettheim said that all the collateral that your bank held should be held as security to cover all the loans of this company to Holzman and Company?

Mr. Hummell.

Objection by Mr. Kramer to question as being leading.

Q. Did you hear any conversation by any member of the firm of Holzman and Company with any member of your banking company, as to whether or not all the collateral that had been placed in the hands of your bank should be held as security for all the loans?

Objection by Mr. Kramer. Objection sustained.

A. I did not.

Cross examination by Mr. Kramer:

Q. When the Carey stock was substituted on May 15, 1905, wasn't it done by letter from Holzman and Company?

A. No, sir.

Q. Where is it?

A. I turned it over to Mr. Dolle.

Q. I show you a letter purporting to have been written by Holzman and Company of May 15, 1905, addressed to your bank, and ask you if that letter was received by the bank?

A. Yes, sir.

Q. Is that the letter whereby the fifty shares of Carey was substituted for some other withdrawal?

A. Yes, sir.

This letter is offered and is marked Exhibit No. 4.

Q. Upon the receipt of this letter, did your bank comply with the request therein contained?

A. Yes, sir.

Q. Was the letter received by mail or messenger?

A. I couldn't say.

Q. Can you recall how you complied with the request, was it by mail or messenger'

A. Why, by messenger.

Q. That is to say, you returned by messenger to Holzman and Company, the security requested?

A. Yes, sir.

Q. And took in exchange the securities substituted?

A. Yes, sir.

Q. But you can't recall whether the letter and fifty shares of Carey came to you by messenger or mail?

A. I couldn't say.

Q. The book from which you have been testifying, that is the collateral book of the bank?

A. Yes, sir.

Q. It is the only one in use by your bank in its dealings with Holzman and Company?

A. Yes, sir.

Mr. Hummell.

Q. Was Holzman and Company a customer or depositor of your bank at the time these loans were made? Did they have an account?

A. Prior to that time?

Q. I am not asking prior to that time. Were they customers of the bank at the time or any of the time as to when these notes were made?

A. No, sir.

Copy of letter marked Exhibit No. 4, offered on page 33:

"Holzman and Company,
Successors to
Feder, Holzman and Company, Bankers.
Cincinnati, 5-15-'05.

Unity Banking and Savings Company, City.

Gentlemen: As a substitute and for the withdrawal of

$1,000.00 Bellevue Ohio School 4's,
2,500.00 Bellevue Ohio Water Works 4's,
1,000.00 Henry County 4 1-2's,
500.00 Cleveland Heights Ohio 5 per cent. bond,

from our loan of March 21, 1905, amount $10,000.00, we hand you herewith,

50 shares Philip Carey Preferred stock.

Respectfully, yours,
Holzman & Company."

Q. Do you recall as a circumstance in your mind the assignment of Holzman and Company on May 25, 1905, the mere fact of Holzman and Company having failed?

A. Yes, sir.

Q. Was Mr. Gottheim sick at that time?

A. No, sir.

Q. Have you no time of fixing the exact day when he took sick and absented himself from the bank?

A. Mr. Goettheim was sick then.

Q. Can you fix either by examination of your books or any other way the time when he was absent from the bank on account of sickness, during April and May?

A. I could not.

Q. Was he sick and away from the bank on May 15th, the day you received a letter from Holzman and Company, substituting fifty shares of Carey?

A. Yes, sir.

Cross-examination, by Mr. Dolle:

Q. Mr. Hummell, while you are assistant secretary, have you ever been elected to such office?

Objection by Mr. Kramer.

Mr. Hummell.

Q. You are the bookkeeper of the bank?

A. Yes, sir.

Q. And as such have charge of the books at the bank?

A. Yes, sir.

Q. Can you from your own recollection at the time these loans were consummated, state whether Holzman and Company had an account with your bank?

A. The account was closed at that time.

Q. You are making that according to your best recollection?

A. Yes, sir.

Q. That is subject to the verification of the books?

A. Yes, sir.

Q. At the time the substitution of fifty shares of Philip Carey Preferred stock was made, were you present at the office of Holzman and Company?

A. Yes, sir.

Q. Who was with you?

A. Diehl.

Q. What officer of the bank?

A. Treasurer.

Q. And also member of the executive committee?

A. Yes, sir.

Q. What brought you down?

A. It takes two of us to get our box at the Union Trust Company deposit.

Q. Holzman and Company wanted the Bellevue School 4 per cent., the Henry County 4 1-2 per cent., the Cleveland Heights Ohio 5 per cent. bond, released from a loan then made with the bank?

A. Yes, sir.

Q. Who did you meet?

A. Mr. Diehl.

Q. Who did you meet of the firm of Holzman and Company?

A. I believe it was Julius.

Q. Julius Holzman?

A. Julius Tugenrich.

Q. Did you meet Mr. Ross Holzman?

A. No, sir.

Q. Or his brother or any other party?

A. I have seen them pass through the office, but didn't speak to them.

Q. Then you and Diehl went to the bank to your safe deposit box to secure these securities?

A. Yes, sir.

Q. To whom did you give them?

Mr. Rothert.

A. To Mr. Diehl.

Q. Who did he give them to in your presence?

A. I believe they were given to Julius.

Q. Was there fifty shares of Philip Carey given in exchange?

A. Yes, sir.

Q. At the time of the delivery of the other?

A. Yes, sir.

Q. You received them?

A. Yes, sir.

Q. And also the power of attorney?

A. Yes, sir.

Q. They were both fastened together and turned over to you?

A. Yes, sir.

Q. They were taken from the other safe deposit box?

A. Yes, sir.

Q. Do your duties call on you to pass upon the signatures of depositors of your bank?

A. Yes, sir.

Q. Have you ever seen Fritz write his name?

A. No, sir.

Meeting adjourned to December 9, at 2:15 p. m., December 9, 1905, at 2:15 p. m.

Mr. Rothert, the first witness called, after being duly sworn by the referee, testifies in answer to questions by Mr. Horstman, as follows:

Q. What is your full name?

A. Oscar Rothert.

Q. Mr. Rothert, what is your occupation?

A. Assistant bookkeeper Fritz Brothers.

Q. How long have you been so employed there?

A. Since 1886.

Q. Richard Fritz has been a member of that company or firm since you were there?

A. Yes, sir.

Q. And as such took an active part in the management of the business?

A. Yes, sir.

Q. State whether or not you have seen him sign his name?

A. I have.

Q. How frequently?

A. Checks and different instruments I witnessed for him.

Q. You generally did the witnessing of instruments?